THE DEPORTATIONS DELIRIUM OF NINETEEN-TWENTY

BY

LOUIS F. POST

AMERICA'S FIRST
RED SCARE

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THE DEPORTATIONS DELIRIUM OF NINETEEN-TWENTY

Lauri F. Rook

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THE DEPORTATIONS DELIRIUM OF NINETEEN-TWENTY

A Personal Narrative of an Historic Official Experience

By LOUIS F. POST

ASSISTANT SECRETARY OF LABOR OF THE UNITED STATES
FROM 1913 TO 1921

WITH AN INTRODUCTION BY MOORFIELD STOREY

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PREFATORY NOTE BY THE AUTHOR

The following story of that delirious outburst in the United States against resident aliens which closely followed the World War and was generally known as "the Red Crusade," is a careful condensation, by the author, of an unpublished manuscript of his in which the events, described in greater detail, are verified by citations in support of every important statement. The personal phases of the narrative are necessitated by the circumstances, as readers will readily see. Its appalling facts are pregnant with wholesome lessons in the fundamental principles of Americanism.

L. F. P.

Washington, D. C.,
October 1, 1923.

INTRODUCTION

When the United States was conquering the Philippine Islands, a leading citizen of Massachusetts said "The question is whether the people of this country really believe in their own principles" and the question was never more pressing than today. We read with pride the Declaration of Independence, and we boast of our wonderful Constitution with the security which it affords to the meanest citizen. We pride ourselves on our freedom of speech, our protection against unwarrantable searches and seizures, the bulwark against oppression afforded by our right to due process of law, and we comfortably assume that in practice the provisions of the Constitution are respected. We resent the charge that we are a lawless people, and close our eyes to lynching mobs whose members go unwhipped of justice. As an abstract proposition it does not seem possible to us that the officers of the United States should under pretense of enforcing the laws trample on the Constitution, and we drift on complacently assured of our safety, in the confident belief that all is going well under the best of all possible governments.

There is however a body of law-abiding people who think that it will not do to be too solicitous about the rights of men who break laws which they approve, while they are not too careful themselves

to obey the laws which they do not approve. Many excellent persons would deal severely with those who embezzle the funds of the government or are guilty of election frauds, but do not hesitate on returning from Europe to smuggle in dutiable goods, or to evade payment of their just taxes.

So to-day on the one hand many of society's leaders condemn the Volstead law and do not hesitate to violate it, while on the other hand the officers charged with its enforcement take such steps as they think best calculated to get results, without the least regard to the constitutional requirements of warrants and due process. Not only that, but they abuse the high officers of the law who respect those requirements. The first class say the 18th Amendment ought not to be the law and should not be obeyed. Their opponents say that those who disobey so salutary a law should not be allowed to shield themselves by provisions manifestly intended for the benefit of honest men and not of professional criminals. They do not admit that there can be a question as to the guilt of the men they attack, or that the latter are entitled to insist that their guilt shall be proved according to law before they are punished. Between these two lawless bodies the Constitution suffers. Theodore Roosevelt's famous story of the question "What is the Constitution between friends?" is still told, but the more pressing question to-day is "What is the Constitution between enemies?" The general feeling is that in a country where liberty is so secure, we can afford to ignore its safeguards if thereby

what seems a desirable object can more easily be obtained.

There can be no more dangerous doctrine, and this volume should bring its perils home to the citizens of this country and make them think. Mr. Post was the Assistant Secretary of Labor under President Wilson, and had a direct personal knowledge of the facts with which he deals, and his revelations are most astonishing.

During the great war there was an evidently concerted attempt to hinder the aid which we gave the Allies by selling them arms, ammunition and such other things as they needed to prosecute the war successfully. Everyone must recall the explosions and conflagrations by which factories and stores were destroyed, the explosives placed on ships, and the other attempts to hamper the production and delivery of supplies. There was every reason to suspect that these outrages were committed in the course of a deliberate campaign planned and carried on by representatives of the German government. Here was certainly an opportunity for detectives to discover the men responsible for these crimes and bring them to justice. In only very few instances were the perpetrators or their accomplices detected. As a whole the campaign was not interrupted and the criminals were not punished.

There was the famous explosion in Wall Street, and several minor ones of which one injured Attorney-General Palmer's house. A number of bombs on another occasion were sent through the

mail, but in only one case did the bomb reach its destination, thanks to the vigilance of an official in the post-office. The men responsible for these crimes were never discovered. So far as these serious matters were concerned, our police system failed, but the explosions terrified the community and produced a general feeling of uneasiness. The country felt sure there was a body of dangerous criminals at large, and this feeling was justified.

When therefore the Department of Justice alleged that there was a very large body of "Reds" in the country, aliens with the principles of Russian Bolsheviks, who were organizing here to overthrow the government of the United States by force, and followed the statement up by raids all over the country in which men and women, aliens and citizens, were seized and imprisoned, we did not disturb ourselves about questions of constitutional law. The men responsible for these arrests, the detectives and those who employed them, filled the newspapers with lurid accounts of what the "Reds" had done and were planning, and produced on a small scale a "reign of terror" in which some thousands of innocent people were very cruelly treated and exposed to much suffering and loss. The statements in the newspapers were false and misleading. There was no conspiracy to overthrow this government and no evidence was ever produced which excused the action of the government. The safeguards of the Constitution were ignored, and any true American must blush at what was done and at the indifference with

which he and all but a handful of his countrymen tolerated it.

Mr. Post's book gives the facts briefly and clearly, is very interesting and will repay careful reading. It is in part a defence of his own course in the crisis, but as he was attacked and threatened with impeachment and dismissal from office because he tried to protect the innocent men who were arrested and imprisoned, this is an important part of the narrative. It shows how far official tyranny was willing to go.

It is no part of an introduction to summarize the contents of the book, and it is enough to say that it is a very important contribution to the history of this country, and a warning to us all. We cannot wrap ourselves in the comfortable belief that our government will run itself, and that in our fortunate country "eternal vigilance" is *not* "the price of liberty." We cannot always control the violence of the mob, but we can at least insist that the men, who are charged with the enforcement of the law, shall not take the lead in breaking it and in ignoring the fundamental principle that every man is presumed to be innocent until he is proved to be guilty, and until his conviction is entitled to all the protection which the law gives to an innocent man.

We must awaken to the very serious condition which confronts the country. Never was the law so generally flouted. Not only does the South deny the Negro his right as a citizen to vote, but it counts him as a voter in order to determine

how many representatives in Congress and how many votes in the Electoral College it is entitled to, and casts his vote for him. Not only does it deny him protection for his life and his property, but it does not try to punish the inhuman cruelties which he is compelled to endure. The leaders of this people, political, religious and educational, have so long been blind to these courses that we have not realized how they have gradually undermined regard for the law all over the country. And now we find a large body of our countrymen, respectable men, many of whom are doubtless inspired by the spirit of lynching, organized to disregard the law and the constitutional rights of their fellow-citizens, and arrogate to themselves the right to punish at their pleasure any man or woman without trial for any cause which they think proper. They adopt all kinds of childish titles, they are careful to disguise themselves, and add to their influence by the assumption of secrecy. They openly assert their right to war in various ways upon Catholics, Jews and the Negroes. The organization cannot last, but its mere existence shows how slight a hold respect for the law has on our people. No gift of prophecy is needed to foretell what disastrous consequences must follow unless our law-abiding citizens rouse themselves and insist that all laws must be enforced and that whoever breaks any law must if detected face *certain* punishment.

MOORFIELD STOREY.

The Deportations Delirium of Nineteen-Twenty

CHAPTER I

THE SENSATIONAL VOYAGE OF "THE SOVIET ARK"

Christmas drew near, the exact date being December 21, 1919, and the hour, as one newspaper picturesquely described it, "in the blackness of the early morning." A sensational sea-voyage was about to begin at the port of New York on board a vessel belonging to the Government of the United States. As to destination, she was subject to sealed orders. Her passengers were 249 aliens in process of deportation under the American immigration laws. They were Russian residents of the United States whose banishment from this country, adjudged by no court, had been decreed under "administrative process."

This arbitrary process of autocratic governments in the past is to-day with reference to alien residents a prerogative of the Executive branch of our Federal government. But for the writ of *habeas corpus* it would be as absolute as the power of the King of England was to imprison his subjects before the revival of that ancient writ, or the like power of the King of France before the French Revolution. In virtue, however, of this ancient

English writ of right, this judicial guardian of personal liberty, our "administrative process" for expelling resident aliens is subject to examination into its regularity in open court.

In every alien-expulsion case there must be lawfully-enacted Congressional legislation authorizing the expulsion, together with some degree of proof that the obnoxious alien is within its scope. If either the legislative authority or proof in the individual case be lacking, and the case comes before a competent court on writ of *habeas corpus,* the court may, and in obedience to its lawful duty must, disregard the "administrative process," and, by sustaining the writ of *habeas corpus,* release the protesting alien from Executive custody. If, however, there be Congressional authority and the proceedings are regular, and if there be any proof at all to bring the alien within that authority—no matter how slight the proof nor how convincingly refuted by counter proof—the Executive decision to expel is absolute and the "administrative process" effective.

It was pursuant to Executive orders made in virtue of this despotic process that those 249 involuntary passengers—"deportees" in official language—were about to sail from New York for an unknown port "in the blackness" of that early morning just before Christmas and a few days before the coming in of the year Nineteen-twenty.

By way of allusion to the peculiar character of their voyage, the vessel on which they were to sail was known, journalistically and therefore popularly,

as "the Soviet Ark,"—a verbal slant at the then two-year-old government of Russia. Her official name, however, was the "Buford." Built in the latter part of the previous century, she was an obscure army transport with a useful service-record in the Spanish-American War of the eighteen-nineties and, two decades later, in the War of the World. She had a burden rating of about five thousand tons and the reputation among sailors of being a "sea-roller." The War Department had loaned her, at the suggestion of the State Department, to the Department of Labor for an experiment in effecting deportations of Russians which for lack of regular communication with Russia at that time was otherwise impracticable.

There being no regular communication between the United States and Russia, aliens expelled from this country could not, without some kind of special arrangement, be deported "to the country whence they came," as the law required, if they happened to have come from Russia. So the Secretary of Labor, the Cabinet official charged by law with administrative responsibility for deporting aliens, relying upon an arrangement by the State Department with Finland—then at war with Russia,—whereby his deportees could be transferred to Russia under flag of truce, borrowed the "Buford" for a deportations experiment.

The sensational sailing, its sensation character fostered by private detectives in the employment of the Department of Justice, was described by one of the New York newspapers as having "brought

mingled emotions of pride and resentment to those who watched the vessel pass out of sight," for "America had risen in her might and delivered a blow that reached the very soul of the incorrigible fanatics" who had "sought every means in their power to overthrow the United States government and bring a chaos satisfying to their degenerate minds." They were characterized as "249 blasphemous creatures who not only rejected America's hospitality and assailed her institutions, but also sought by a campaign of assassination and terrorism to ruin her as a nation of free men."

These were typical expressions of the sentiment to which the American press, with but few exceptions, gave voice when the "Buford" set sail. In editorial comment as well as in news reports, and especially in conspicuous and sensational headlines, most of the daily papers of the United States made that shipload of deportees appear to excitable readers to be a collection of convicted anarchists of the bomb-throwing variety, caught in destructive plotting against the Government of the United States. And this atmosphere which the daily press generated was with few exceptions inhaled and exhaled by the weekly press. So it came to be generally understood, quite contrary to the fact, that the 249 "Buford" deportees had been convincingly adjudged guilty of murderous activities.

The conduct, however, of the administrative officials in lawful control was for the most part humane. From this considerate policy which Secretary Wilson had ordered there was but one

serious variation. The wives and young children of some of the deportees were cruelly left behind. To their consequent suffering, and quite irrespective of such mental anguish as the bewildered husbands and fathers may have endured, only a hard-boiled alien-hater could be indifferent.

None of this was Secretary Wilson's fault. He had no funds for sending their families along with the deportees, for Congress negligently leaves the families of deported aliens in the plight of families of convicted criminals—and this notwithstanding the legal commonplace that alien deportees are not convicted criminals. So Mr. Wilson directed that no deportee having wife or child in this country be placed on board the "Buford." His instructions were observed and obeyed at all the Immigration Stations but one. This was the station at Ellis Island, New York. If they reached that station they were either overlooked or disobeyed. Consequently there were many pathetic instances of family separation.

Notice of only a few hours was given to the impounded deportees at Ellis Island that their voyage was about to begin. They had no opportunity to notify any one; and not until the "Buford" was far out at sea were their relatives or friends or even the lawyers of those who had lawyers aware of any intention to deport them at that or any other approximate time. It is not strange, therefore, that the deportations seemed to bereaved families left behind, and to their friends, to have been vicious kidnappings instead of regular,

even if harsh, administrative proceedings according to law.

Most of the women whose husbands were thus secretly shipped away from them were dependent upon their husbands for support. Some had saved, out of scant wages for hard work, a little money "against a rainy day"; but the money of all was beyond their reach, mostly in postal-savings or bank accounts subject to their husbands' drafts or in the form of unpaid wages. Many had sold their household goods, expecting to go along with their husbands. Some had small children to care for. Most of them were in abject want.

To mitigate all this harm, measures were taken promptly upon the "Buford's" arrival at her destination. Although it was then too late to avoid the weeks of suffering from want by family dependents left behind when the expedition sailed so suddenly and so secretly, facilities were finally afforded for executing and forwarding to the United States powers of attorney for the collection by American dependents of moneys that might be owing to any of the deportees. About 100 such documents were executed and forwarded to the designated persons in America. The individual sums varied, but the aggregate was $45,470.39. It included postal-savings credits, credits on checking accounts at commercial banks, uncollected wages, personal debts, and Liberty-bond holdings.

Those considerate measures were immediately due to the good management of F. W. Berkshire, the Supervising Inspector of Immigration on the

Mexican border, who had been detailed by Secretary Wilson, at the suggestion of Commissioner General Caminetti, to manage the "Buford" expedition during its voyage. To support him in a mission apparently so perilous, a strong guard of soldiers had been furnished by the War Department. It consisted of a colonel, a lieutenant-colonel, 4 lieutenants and 58 enlisted men.

Notwithstanding the circumstances which seemed to necessitate these military precautions, and quite contrary to published statements of contemplated ill-treatment—for instance, that except at meal times on the voyage the deportees would be confined to their staterooms with only occasional and supervised exercise on deck,—Inspector Berkshire treated his charges humanely in every reasonable way from the beginning of the voyage to its end. And this was not without beneficial effect; at any rate it had no ill results. The deportees complied unprotestingly throughout the voyage with all the rules prescribed for their conduct.

On one occasion they did organize to complain of their food. But their complaint was well founded and Inspector Berkshire so recognized it. It related to the unsatisfactory quality of their bread. Investigation showed that all on board were getting poor bread, and that this was due to the fact that the two assistant bakers upon whom all responsibility for bread-making on board had fallen in consequence of a detention of the chief baker in the ship's hospital, were incompetent. When this

explanation had been made to the authorized spokesman for the deportees, Alexander Berkman, he offered to supply two bakers from the body of the deportees to take the place without pay of the incompetent assistant bakers of the ship's crew. His offer was accepted, and from that time until the "Buford" entered the Kiel Canal there was no complaint nor any disorder.

At this stage of the voyage, however, Inspector Berkshire modified the considerate policy he had until then pursued. He summarily and without provocation from them locked the deportees below decks and subjected them to military guard. That the temptation to make this change was great may be inferred from the immediate circumstances. To chance a riotous abuse of privilege out upon the ocean and the North Sea was quite a different thing from chancing such an outbreak along a narrow waterway in a German province only a year after the World War. There were therefore better reasons for suspending the prior policy while passing through the Kiel Canal than vague fears, stimulated by recollections of the delirium at home, that the deportees might "do something" to somebody if "something" were not first done to them.

In this emergency the deportees were not as considerate of the Supervising Inspector's responsibilities as he had until then been of their liberties and comfort. Instead of protesting in good temper against their temporary imprisonment below decks, they protested with a medley of discordant noises—fearsome noises to hysteric imagi-

nations. This demonstration might have made matters worse had the deportees been subject to military discretion. But upon the mind of the competent and sane civilian who had them in his official charge, its effect was to revive and intensify his confidence in the policy he had pursued from New York to the Elbe. Recognizing a reasonableness in the objection of the deportees—however unreasonable their mode of making it—to being placed in close confinement under military guard after their exemplary conduct in freedom throughout their voyage thus far, he ordered their restoration to the liberties of the forward deck.

By substituting that treatment for the repressive one he had temporarily adopted, Inspector Berkshire checked the disorder and with it every tendency to revolt. He thereby obviated all seeming necessity for what might have led on, excusably if not justifiably, to a military assault upon the locked-in deportees. After this they made no more discordant noises, unless possibly by good-humored singing of harmless songs on the "Buford's" deck as she glided by the banks of the Kiel Canal.

Her passage through the Canal did not end the "Buford's" voyage—nor its dangers. She had still the perilous Baltic Sea to cross.

In the English Channel she had been joined by a "destroyer" which, after escorting her through the North Sea, remained with her the rest of the way. This gruesome companionship was not to protect the "Buford's" crew from riots by her deportees; nor to awe them, as some of them

might reasonably have suspected. It was for the purpose of giving immediate aid in case the "Buford" were unfortunate enough to collide with a floating mine in the North Sea or one of the yet anchored mines in the Baltic.

After she had passed through the Canal, and while in Kiel Harbor for repairs, our "Soviet Ark" received orders from the War Department to cross the Baltic to Libau, although none of the War mines in the Baltic, except along the coast of Sweden, had as yet been removed. Between the rows of the rest there were roads about two miles wide, marked at intervals along their borders with buoys showing red lights at night; and along those risky sea-roads the "Ark" had yet to sail.

She weighed anchor early in the afternoon of January 13, 1920, and making her way out of Kiel Harbor headed for Libau, on the west coast of Latvia. When nearly two days at sea she was reached by wireless with orders that shifted her course to Hango, on the south coast of Finland. These altered orders were probably due to disturbed conditions in the vicinity of Libau—possibly to demands by the Latvian government to which the American State Department was reluctant to accede.

From Cuxhaven, at the North Sea end of the Canal, the "Buford" had carried a German pilot who remained with her until her arrival at Hango. He directed her course along the mine-bordered roads of the Baltic to her destination, using for guidance a German War-mine map of War-time

manufacture. If all on board had known the peculiar perils they were passing through, the discipline of the ship's company might have been seriously disturbed. Amateurish indeed, in those circumstances, must the anarchistic deportees almost certainly have felt. The few officials on the "Buford" who at that time were in the confidence of the German pilot may quite pardonably have thought of themselves as living chips in a poker game with Fate.

This phase of the voyage lasted slightly longer than three days. On the 16th of January, 1920, at five o'clock in the afternoon—four full weeks after leaving behind her the Statue of Liberty in the Harbor of New York—"the Soviet Ark" entered the Harbor of Hango in Finland. At about noon on the following day a military officer of the General Staff of Finland, accompanied by a representative of the Finnish Foreign Office, came on board. They explained that they were prepared to take charge of the deportees and to pass them over the Russian frontier.

Immediately following their arrival, a special railway train drew up at the dock to which the deportees were conducted. And at 4 o'clock in the afternoon of January 19, 1920,—just three days after their debarkation in the Finnish Harbor of Hango—all of them were transferred by the military authorities of the Government of Finland to the military authorities of Soviet Russia, under the protection of a flag of truce.

CHAPTER II

CULPABILITY OF "THE SOVIET ARK" DEPORTEES

Among the 249 deportees by "the Soviet Ark" some had at one time or another expressed opinions which most Americans justly regard as hostile to American institutions. Others were members of an association of Russian workingmen the organic law of which, in one of its clauses, contemplated the destruction of all governments. The great majority, however, were innnocent of any hostility to the United States.

The most dangerous in public estimation was Emma Goldman—unless her friend and fellow agitator, Alexander Berkman, be coupled with her in that category.

This popular estimate of Miss Goldman sprang out of a newspaper notoriety which began in 1893, when she was a young woman in her twenties, in consequence of a sensational speech she had made to striking garment-workers in New York City. For making that speech she was convicted of "inciting to riot and unlawful assembly," and sentenced to a year's imprisonment on Blackwell's Island.

During the next twenty-five years she was several times arrested by the police in various cities for making public speeches which they regarded as

unlawful and which the newspapers exploited as menacing to public order. Apparently, however, her arrests were not followed by convictions in the courts after the first one in 1893.

Efforts to deport her by administrative process, beginning as early as 1907, were also unsuccessful for a decade. This seems to have been due at first to the fact that she was the wife of a naturalized American citizen and therefore a citizen herself. But even after her husband's citizenship had been revoked, as it was in 1908—twenty-five years after having been granted—the pressure to deport her remained ineffective until her conviction in 1917 for conspiring to obstruct the selective-draft law when our country was entering the World War.

Although her record as an objectionable agitator had been conspicuous for a generation, little or nothing was known to the public about Emma Goldman's everyday life. Her acquaintances, however, spoke of her as a trained nurse from early womanhood and as active in that service, though often unidentified by her patients because she found it necessary, owing to her newspaper notoriety, to practice her profession under an unfamiliar name. It was for the same reason, probably, that she used an alias when managing "the Russian Players" during their notable visit to the United States in the early years of the present century.

The first official act looking to Miss Goldman's deportation after her husband's citizenship had been revoked, was taken in consequence of her sen-

tence in 1917 for violation of the selective-draft law. Nearly two years later, when this sentence was about to expire, new deportation proceedings were instituted, and for final decision her case came before me as Assistant Secretary of Labor.

She rested her residential rights upon a claim to American citizenship in virtue of her husband's naturalization, a defense that would have been conclusive against her banishment but for the revocation by judicial proceedings of her husband's naturalization nearly ten years before. For that reason the only question to be decided with reference to her citizenship was whether the revocation of his could operate as a revocation of hers, especially as she had not been made a party in court to the revocation proceedings. I decided that the revocation of her husband's citizenship, upon which hers depended, operated automatically to subject her to the disabilities of an alien. If I erred, my decision was jurisdictional and would have been reviewed by the courts in *habeas corpus* proceedings. But Miss Goldman did not take her case to the courts.

There was only one other question. Had she been proved to be an anarchist within the intent of the Act of Congress of October 16, 1918? That Miss Goldman was an anarchist she confessed. But there are various kinds. At one extreme are malignant conspirators and destructive revolutionists; at the other are apostles of peace, preachers of the principle of non-resistance, of "turning the other cheek", persons supremely harmless except to those perverted imaginations which anticipate violent

revolutions as consequences of non-resistant propaganda. Considering philosophical anarchism as an extreme intellectual or emotional reaction from the inequalities of economic opportunity which governments conserve, and violent anarchism as the extreme militant reaction against those inequalities —somewhat as in other connections one might contrast Quakers with Roundheads, or John Greenleaf Whittier with "Ossawatomie" Brown—Emma Goldman may probably be placed somewhere between the two extremes.

Perhaps I ought not to venture this or any other characterization of Miss Goldman, for I have very little acquaintance with her propaganda. Rigorously opposed to it as I am from what I have understood of it, I might almost fairly be accused of indulging a tendency of mind akin to that which Lowell attributed to "Parson Wilbur" with reference to William Lloyd Garrison's anti-slavery writings in "The Liberator," to which that mythical parson referred as a print whose heresies he took every opportunity of combatting and of which he thanked God he had never read a single line.

Some, however, of Miss Goldman's declarations I have read. I had to do so while considering her case in deportation proceedings. And from such as I have read I venture to infer that she is one of those disbelievers in violence who anticipate forcible resistance to peaceable developments of anarchistic policies, and therefore and in support

of those policies justify the use of force as a defense against force.

But I did not have to decide officially what kind of anarchist Emma Goldman was, for all differences between the widely divergent varieties of anarchism, from terroristic to pacific, had been ignored by the Acts of Congress by which I was bound. The sole question before me was whether or not she believed that no government would be better for human society than any kind of government. If she did, she was an anarchist. And if she were an anarchist her deportation (she being an alien) was mandatorily required by the law. As the record of her hearing showed her to be an anarchist, even though it did not disclose her kind of anarchism definitely, I made an administrative decision in behalf of the Secretary of Labor, whose official *alter ego* I happened at the moment to be, which ordered the Commissioner General of Immigration to deport her.

No question of sympathy on the one hand nor of antipathy on the other was involved. Whether or not I liked the law did not enter in. I was not a maker of laws but an administrator of a law already constitutionally made. To administer it fairly and effectively, though humanely, was my only function. And this law was mandatory. I had no choice but to measure by it the facts presented in the record of hearing. In any case in which the recorded facts brought the alien within the manifest intent of the law, my refusal to execute its requirements would have been in vio-

lation of my oath of office, treacherous to the Government which I administratively represented, and essentially repugnant to the developing democratic principles of our Republic. Similarly perjured, equally treacherous, and quite as undemocratic should I have been had I in any case decided to order deportation without evidence reasonably convincing that the alien was lawfully deportable.

In making the decision which ordered Emma Goldman's deportation, I directed the Commissioner General of Immigration, as the alien-expulsion laws required, to deport her to the country whence she had come. That country was understood to be Russia. But Russia was then dominated in some regions by the Bolshevist party of the Soviet government, commonly known in the United States as "Reds," and in other regions by Czaristic reactionaries, commonly known as "Whites." Inasmuch, then, as the deportation of resident aliens from the United States is in law not a punishment for crime, even in cases in which the cause for deportation may be a crime,—else the deportee, though an alien, would be entitled to a judicial instead of a mere administrative trial and judgment,—but is only for the purpose of terminating the residence in this country of classes of visitors who are catalogued by Congress as undesirable, and inasmuch also as it is no part of any lawful or decent function of American officials to connive at persecution in order to gratify any person or to promote any interest, I made what I

regarded as a reasonable reservation. My reservation provided that the place to which Miss Goldman must be deported would be determined later by the Department of Labor upon a specific recommendation from the Bureau of Immigration.

About three weeks before the sailing of the "Buford," the Commissioner General of Immigration made such a recommendation in comprehensive plans for deportations to Russia. His plans, which doubtless contemplated the subsequent "Buford" experiment, seemed to meet the requirements of my reservation in the Goldman case. They had the appearance of being well designed to prevent the delivery of our Russian deportees to probable persecution by reactionary military authorities, and yet to secure their return to their home country, not as convicted criminals, which they were not, but as visitors among us who had worn out their welcome.

So I directed specifically, in conformity with my previous more general reservation, that Emma Goldman be deported to Soviet Russia—to "Red Russia" as that part of Russia was then commonly called,—and not to "White Russia," where at that time she would probably have fared worse than a "White" spy in a "Red" camp.

The other "Buford" deportee who was heralded along with Emma Goldman as extremely dangerous, Alexander Berkman, had lived in the United States since 1888, having arrived while he was still a youth. In 1892 he attempted to murder Henry Clay Frick, a distinguished American "captain of

industry," as men of his type and business accomplishments were at that time called. Berkman committed this crime as an anarchistic "propagandist by deed." His victim was a millionaire leader of steel manufacturers organized in the Carnegie interest. The bitter industrial conflict notable as "the Homestead strike" was on. Denouncing Frick as a tyrant, Berkman appears to have made the deadly assault upon him in the spirit in which Charlotte Corday made hers upon Marat, but without achieving a like result or suffering a like penalty. His pistol-shot wounded but did not kill. Consequently, instead of being hanged for his crime, as he declared he had expected to be, Berkman served a term in a Pennsylvania penitentiary.

Sentenced for twenty-one years, he was paroled at the end of fourteen for good behavior as a prisoner. After his release, the police occasionally subjected him to arrest for public speeches, and upon one of these arrests he was committed to a workhouse for disorderly conduct.

Berkman had no further criminal record until his conviction, along with Emma Goldman in 1917, for obstructing the selective-draft Act upon the entry of this country into the World War. But neither his conviction and sentence for his old-time murderous assault nor for his violation of the temporary War-statute figured at his deportation-hearing. The only legal reason for Berkman's deportation was his belief in "anarchism," that is, in the abolition of governmental force. For this

reason, and this alone, he became one of the involuntary passengers on "the Soviet Ark."

His variety of anarchism as described by himself—and there was no other evidence on that point in the record,—was called out from him by Immigrant Inspector Eugene Kessler, at the Federal penitentiary in Georgia, in the course of a singularly philosophical and acute cross-examination. Answering one of the Inspector's questions, Berkman said that as an anarchist he believed neither in government nor in violence, terms which he regarded as synonymous, arguing that the World War was "a demonstration of the principle that government is founded on violence," which was his reason for opposing it. "What the League of Nations tries to accomplish for the future," he added, "I advocated thirty-five years ago—the abolition of war." Following those introductory observations, Berkman made a formal definition of anarchism as he accepted it, saying that it is "the philosophy of a new social order based on liberty unrestricted by man-made law, the theory that all forms of government rest on violence and are therefore wrong and harmful as well as mercenary."

In the Berkman case as in Miss Goldman's, it happened that I made the decision. His case, like hers, had been pending ever since these two aliens were sentenced to imprisonment for their War offenses of more than two years earlier. Along with the application for a warrant of arrest for Miss Goldman—which I refused to issue because it

was not accompanied with proof of her alienage—there had come a like application for a warrant for Berkman. His alienage and his culpability under the statute were both shown by accompanying proof, and I issued a warrant for his arrest. This was in July, 1917, just after he and Miss Goldman were sentenced to imprisonment and fine upon conviction in the Federal court at New York of having violated a War law. Before the expiration of their prison sentences, however, a more stringent alien-expulsion law than the Act of 1917 was enacted by Congress, and under this, Secretary Wilson ordered new warrants for the arrest of both.

The subsequent proceedings in Miss Goldman's case I have already told. Of the proceedings against Berkman there is nothing more to tell than that in his case, which came to me for decision nearly a month before the "Buford" sailed, I decided upon the evidence before me to direct his deportation to Russia, the country from which he had come, and that I did so with the reservation I had made in the Goldman case, that he must not be deported to any part of Russia dominated by the "White Guards."

Among the other deportees of the anarchist class who sailed on the so-called "Soviet Ark" were two young women. They were characterized in one of the newspaper descriptions of the "Buford" embarkation as "female terrorists who must leave America because of their plotting against the Government." But the records of their deportation-hearings do not show any "terroristic"

activities or purposes on the part of either. One of them, the younger, was Ethel Bernstein. The other was Dora Lipkin. As they asserted that they were anarchists, and admitted membership in an organization the organic law of which brought its alien members within the proscription of Congress, they were mandatorily deportable on two grounds. But in neither case was there any proof of terroristic purposes, propensities or beliefs.

Besides Dora Lipkin, Ethel Bernstein, Alexander Berkman and Emma Goldman, there were 47 passengers by "the Soviet Ark" whose deportation had been directed by the Department of Labor upon proof of their having made "no-government" utterances or entertained "no-government" beliefs. This proof alone made their deportation mandatory.

The name of the proscribed organization in which Dora Lipkin admitted membership was "The Federation of Unions of Russian Workers of the United States and Canada"; and for mere membership in this organization, no less than 184 out of the 249 "Buford" deportees were deported.

It appears to have been organized in 1911 by Russians then residing in the United States, whose purpose was to promote the overthrow of the government of the Russian Czar. Its first convention was held in Detroit in 1914. When raids were made upon its schools and club-rooms in 1919, it had about 7,000 members. There were branches in many parts of the United States. For the arrest of its members about 600 warrants were issued by the Department of Labor. Of these, 452 were

executed by the arrest of aliens supposed to be members of the organization, and a total of 246 of those arrested were deported.

The clauses in the organic law of that Federation which subjected its alien members to banishment from this country were two. One was to the effect that "the struggle between" the working and the propertied classes "continues at the present time, and will be finished when the toiling masses organize as a class" and, understanding their true interest, "take possession by forcible social revolution of all the wealth of the world." The other was in the nature of a proclamation that the members, "organizing themselves into unions of Russian workers," would, "as a part of the workers of the world," strive to promote "the principles laid" down "as the foundation of the Federation," together with "the work of organizing the great mass of Russian immigrants for the speedier liberation of Russia and all mankind." This clause was followed by one to the effect that "having accomplished such an overthrow," that is, "having destroyed at the same time all institutions of state and authority, the class of the disinherited will have to proclaim a society of free producers aiming to satisfy the needs of each individual person, who in turn will give to society his labor and his knowledge."

Some of the 184 "Buford" deportees who were deported only for membership in this Federation must have been well aware of its revolutionary policies. Conspicuous among them was Peter

Bianky, a Russian of twenty-seven, with a family in New York consisting of his wife and their little son. Bianky had come to the United States at the age of twenty-two, while the Czar's government yet held sway over his native country; and at the time of his deportation he was the secretary of the Federation and had been for nearly a year. He was also editor of the Federation's organ, "Bread and Freedom." His knowledge, therefore, of the revolutionary policies of this Russian society was a reasonable inference. There could, indeed, be no doubt of the fact, quite apart from any inference, for he testified that he knew the principles of the organization and believed in them. The inference alone, however, would have been enough to justify his deportation, even if the expulsion law had required proof of guilty knowledge. But neither inference nor proof was necessary on that point. Membership alone made the case against him complete. And so of the whole group of 184 members of that organization in the total of 249 "Buford" passengers.

Of an enormous proportion of the 184, however, it is a reasonable probability that they were totally ignorant of the objectionable clauses in the organic law of their organization. And this probability is confirmed by parts of the testimony of its secretary. Asked by the examining Inspector if the Federation admitted members without their knowing the principles of the organization, he replied: "Yes; we accept them upon the statement of two other members that the applicant is an

honest worker and lives by his own labor." Referring then to those declared purposes of the organization which subjected alien members to deportation for merely being members, the examining Inspector asked: "Does he sign this statement?" "No," replied the secretary; "we never swear them and they don't sign. If he wishes, he can familiarize himself with the principles later on."

Aliens coming into a proscribed organization in that way, with no knowledge of its revolutionary purpose, supposing it to be a legitimate labor union or social club of their fellow countrymen in a foreign land, must by the law be held responsible to the extreme for their indiscretion; and in this instance probably no less than 175 such persons, out of the total of 249 deportees by "the Soviet Ark"—about two-thirds—were held to the full measure of that responsibility. That any of these were dangerous conspirators would in no wise be a rational inference from the evidence in their cases.

In that group of innocent "members" of the Federation of Unions of Russian Workers was a young Russian who was in fact not a member. He had lived six years in this country, earning his way by hard work—useful and not over-waged. Eager for education, but precluded by his variable working-hours from attendance at public night-school, he looked about for a substitute school and found it at the headquarters of the Federation of Unions of Russian Workers in New York City known as "the People's House." While he was working at his

mathematics one night at that school, "the People's House" was raided—under the circumstances narrated in the next Chapter—and this young man was "run in" along with his fellow pupils and their teachers.

At his deportation-hearing there was a total lack of evidence against him. He denied being an anarchist of any kind, and there was not so much as a pretense of proof to the contrary. He denied being a member of any organization except a Methodist church in New York in which he was active, and there was no counterproof. His statement in this particular was fully corroborated after his deportation. At his hearing he proved affirmatively as well as a prisoner prevented from communicating with his friends, as he was, could be expected to prove, that ever since his arrival in this country he had been a law-abiding resident. But he was one of "the Soviet Ark's" involuntary passengers.

The "Red" deportees on board "the Soviet Ark," of which that young man was one, numbered 235 instead of 249; for 14 of the 249 were deported for residential defects wholly unrelated to "anarchism", "bolshevism", "sovietism" or any other kind of "radicalism". They were types of "undesirable aliens" whose residence here becomes objectionable from quite commonplace infirmities. It may be useful, therefore, to summarize the official statements which classified all the deportees by the "Buford" with reference to the reasons for their deportation respectively. In the summary of

totals that follows here, the classifications of the official report are preserved:

Anarchists (persons who do not believe in any form of government)	51
Members of an organization which teaches the overthrow of government by force (Federation of Unions of Russian Workers)	184
Total "radical" deportees by "Buford".	235
Aliens *convicted of crime* involving moral turpitude	3
Aliens likely to become *public charges* at the time of arrival in this country	9
Alien *procurer*	1
Alien who had *entered this country surreptitiously*	1
Total deportees by "Buford"	249

CHAPTER III

DEPORTATION RAIDS IN ANTICIPATION OF THE VOYAGE OF "THE SOVIET ARK"

Those of the "Buford" deportees whose banishment was for membership in the Federation of Unions of Russian Workers had been arrested in raids upon meetings of that organization which they were attending. The raids were made at night and simultaneously in eleven cities. They had been staged by the detective auxiliary of the Department of Justice to be "pulled off" at approximately the same hour in each city. The date set was November 7, 1919.

In the night of that day, accordingly, and under the general management of the same detective auxiliary, the local police of the several selected cities "rounded up" all persons found at Russian Workers' meetings regardless of every consideration except their presence there. Officials of the organization, professional teachers peaceably leading their night-school pupils in legitimate studies, members of the organization and non-members, men and women, aliens and citizens, were indiscriminately and in many instances brutally swept into custody.

As these raids were alike in purpose and execution, a description of the principal one will

sufficiently serve for all. It was made in New York City. Its objective was the Russian "People's House," a four-story brown-stone building at No. 133 East 15th street—the headquarters in New York of the Federation of Unions of Russian Workers.

The same "People's House" had been recently raided under the direction of the "Lusk Committee" of the New York legislature. On that occasion, according to the New York World of November 8, 1919, "a large number of prisoners were taken," and "an even larger quantity of literature" was seized than at the later raid about to be described; yet the "Lusk-Committee raid was without result" as "to prosecutions or convictions."

The impulse of both raids appears to have sprung out of those mysterious indications of a bombing conspiracy which had startled the country in May and June of the same year and of which my next Chapter will tell. Alluding to one of the results of that conspiracy, the New York Times of November 8, 1919, put into its report of the November raid at the "People's House" this explanation: "Since the bomb outrages last June which led to the appointment of Flynn"—the chief of the new detective auxiliary to the Attorney General's department in the Federal government and a noted private detective—"to take charge of the work of ferreting out anarchy, the police have been watching and cataloguing every act and every utterance of radicals in this city, even the so-

called 'harmless bolsheviki.' It is hoped that sooner or later one of these raids will yield clues to the perpetrators of the bomb outrages."

But that hope was ulterior. The immediate object of the November raids was to arrest "red" aliens for deportation. Yet there went with the immediate object an incidental design to terrify Russian residents of the wage-working class whose memories of the Czar's government had impelled them to welcome the soviet regime in Russia.

"Choosing the second anniversary of the Bolshevist revolution in Russia as the psychological moment to strike,"—so the same New York paper explained in the same report of the November raid in New York—"the Federal government, aided by municipal police in New York and several other large cities, last night dealt the most serious and sweeping blow it has yet aimed at criminal anarchists. Armed with warrants for dangerous agitators whom Federal agents have trailed for months, the raiders swarmed into the Russian People's House." The hour was nine at night. The raid was managed by a sergeant of the New York police—the sergeant of "the bomb squad." He had been co-operating in that city with Federal officials in "the effort to root out the anarchists known to be in New York"; but neither he nor any of his men would discuss the raid they had made, all of them asserting that they were silent by order of the chief of the Federal detectives who had recently been appointed "with orders to leave

no stone unturned to end all symptoms of anarchy in the United States."

When the "People's House had been completely surrounded" by the raiders, so the Times report continued, "the men in charge of each section of the raiding party ordered their men to the ground and then went forward." The inmates "had not the slightest idea of what was coming," and the raiders "had penetrated the Russian People's House from top to bottom" before there was any alarm.

On "one of the floors a class was in progress," I still quote from the Times. "Several of those in this class said afterwards that they were merely studying English when the police arrived.

" 'Out into the hall, everybody!' was the terse order.

" 'Line up there, and don't make any noise!'

"At first there" were indications "that the presence of the policemen would be" challenged, "some of the women being especially vociferous in their demands to know the meaning of the raid;" but "the harsh command to 'shut up there, you, if you know what's good for you!' brought silence." The inmates of the building were then roughly "hustled into waiting automobiles and driven away."

That several of the victims of this ruffianly raid suffered physical injury without having furnished any excuse for it, was quite evident. Marks of "roughneck" discipline were upon some of them when they were brought to the Immigrant Station

at Ellis Island. One of the more notable sufferers whose condition was informally reported to me by a trustworthy official of the Bureau of Immigration, was a mild-mannered school-teacher whose legitimate inquiry when "rounded up" with his pupils, had been answered with blows that smashed the spectacles he wore and wounded his face severely.

Newspaper reporters noticed the outrages and the lack of excuse for them. "A number of those in the building," wrote the Times reporter, "were badly beaten by the police during the raid, their heads wrapped in bandages testifying to the rough manner in which they had been handled." Another reporter, representing the World, observed that "the officers had no difficulty in obtaining admission to the house," and that although "a good deal of noise attended the raid," there was nevertheless "no real opposition to the officers" so far as "those on the outside could determine." This reporter added that "there seemed to be little real basis for the reports that it had been necessary to use force in any instance."

His impression was afterwards amply confirmed. There was a total lack of proof of resistance by the inmates. And though there were categorical denials by the aggressors of any injuries to their captives, these were made in the face of the manifest fact of injuries otherwise unaccounted for. Moreover, circumstantial statements by captives were not disputed circumstantially. And over all, there were marked indications that the raid was intended to be terrifying.

For "nearly an hour after the raid," said the World of November 8, "men were carrying" from the People's House in Fifteenth Street, "books, pamphlets and other literature which were loaded" upon "wagons and taken to the offices" on Park Row, the local headquarters of the detective auxiliary to the Department of Justice. "Several tons" of this literature, said the Times of the same date, "filling several huge trucks" were carried away, "all of it said to be anarchist literature."

If in all that wholesale seizure there was aught which could lawfully have subjected any of the inmates of the Russian "People's House" in New York to charges of conspiring against the government of the United States, or of any other kind of crime, it must have been lost in the confusion of the seizure or in transmission to the Department of Labor, for none got into the record.

If the inmates of that Russian Workers' headquarters on that eventful night were indeed incendiary conspirators against our country, the raid was ill-calculated to discover incriminating facts. Its results, if it were well-conceived, tend to prove the innocence of its victims. Though the raiders went "systematically through the building in search of incriminating literature of any kind," as the Times reported on the 8th, though "doors were taken off," though "desks were ripped open," though "even the few carpets were taken up," all "to find possible hiding places for documents," nothing suspicious was found.

That the raiding officials themselves did not regard their captives as probable criminals, and that their superiors who directed the raid had not expected to find criminals in the raided house, must be inferred from the fact, reported by the Times of the next day, that immediately after the raid all the captives "who were able to prove their citizenship" were unconditionally released. Is a dangerous criminal any less criminal, or any less dangerous, for being an American citizen? Is an alien any more so for being an alien? Certainly not. Then why release the raid-caught citizen and hold the raid-caught alien, the evidence against them being in every respect except alienage precisely the same?

Was it for lack of appropriate penal laws? There was no such lack, either of State laws or of Federal. The explanation could not possibly have related to degrees of criminality or of danger to American institutions. It must have had another bearing. Possibly this was its bearing: Whereas a citizen cannot be punished without substantial cause and after conviction at a judicial trial, an alien may be banished for frivolous causes and by autocratic "administrative process."

That raiding in New York City was fairly typical of all the concerted raids in different cities that were made simultaneously under central control upon meetings of the Federation of Unions of Russian Workers on the 7th of November, 1919. There may have been less police ruffianism in some of the cities than in New York; but the raids were

everywhere conducted in similar defiance of American pre-War ideals of law and order.

Inasmuch as those November raids of 1919, and also the equally lawless and even more ruthless raids of the following January yet to be described, were supposed to have got their impulse from a bombing conspiracy of the previous summer, the sequence of my story requires at this stage a glance at the circumstances of that bombing crime.

CHAPTER IV

THE BOMBS THAT BEGOT THE DEPORTATIONS DELIRIUM

The newspapers of early May, 1919, blazed with accounts of an interception in the mails at New York of sixteen explosive packages. Subsequent investigation showed that these packages had been prepared with deadly and malicious skill. Excitement over this discovery was the more intense because "the first of May" had long been a stock subject for prophecies of evil doings among or in behalf of wage-earning classes. That date, the European Labor-day, had been adopted by European terrorists for hinting at Labor uprisings and for an occasional assassination. In the European imagination, consequently, "May-day" became an anniversary to be anticipated with fear. And this trans-Atlantic nervousness had spread until annual rumors of "May-day" outrages disturbed American imaginations also; though for many years no "May-day" outrages occurred in the United States to verify the annual rumors. In 1919, however, there appeared to be confirmation in the discovery in the mails of those explosive packages just in time for a "May-day" sensation.

More than two dozen such packages were gathered from street mailing-boxes into the General Post Office at New York in the regular course of

mail collections. Sixteen of them were stopped there by a vigilant postal clerk. This was not, however, from any suspicion of their dangerous character; it was because the clerk detected a shortage of postage. He sent them to the Short Payment Division in the basement of the Post Office building, and there they remained until their destructive possibilities came by accident to be suspected. They were still there on the 29th of April late at night when this postal clerk left his desk for home. While on his way near midnight he read in a morning paper of the 30th an account of the bursting of a mail-received bomb in Georgia. The reported circumstances excited in him a suspicion of the packages he had held for short-postage, and he returned at once to the Post Office. Reporting there his fears to the Night Superintendent the latter called in the Chief Postal Inspector who segregated the packages. Later on the 30th of April one of them was minutely inspected by the Chief Inspector of the Bureau of Combustibles of the Fire Department of the city and his Assistant, and they discovered and reported the dangerous character of the packages.

Besides those explosive packages, so fortunately detected, several like them had already gone out of the New York Post Office to their respective destinations. One of these, the very one about the bursting of which the postal clerk read in a newspaper on his way home on the 30th of April and was thereby inspired to cause the investigation which probably prevented several catastrophes,

went to ex-Senator Hardwick, afterwards Governor of Georgia, whose term as a United States Senator and Chairman of the Senate Committee on Immigration had but recently expired. This package was delivered at Senator Hardwick's Georgia home. Upon being opened by a colored maid, it exploded and blew off both her hands, severely injuring Mrs. Hardwick also who was standing near. In consequence of this catastrophe and the thoughtful act of the New York postal clerk upon learning of it, the postal authorities everywhere were warned. The warning was effective. Except at the Hardwick home no one was injured by any of those two dozen or more postal bombs.

With reports of the timely frustration of this death-dealing plot, except in the one sad instance of the maid at Senator Hardwick's home, the newspapers were filled. Whatever the event in itself lacked for exciting horror and fear, they supplied abundantly in daily reports of detective operations. The entire "bomb squad" of the New York City police, the bomb experts of the Fire Department, postal inspectors, private detectives, detectives of the Department of Justice, all were "sleeplessly" at work on the case. Every day there was a multiplicity of "leads," hither and yon, each giving promise of "results" that were never realized. Arrests were "imminent," but none were made except arbitrarily and for "third degree" purposes, the victims being persons of few friends and these without influence. There were "round-ups" that made startling headlines, but at

the "showdowns" there was "nothing doing." One nerve-thrilling discovery pointed to a mythical "Committee of Five" as the "most desperate band of anarchists ever organized in the United States" —according to an "undercover man" in the employment of the Federal Government. One detective who at first was thoughtful enough to suspect that the bombs had been sent by some irresponsible crank, quickly came to the orthodox police-conclusion that "the whole thing was a gigantic conspiracy by an organized gang." And so the hue and cry clattered on, with every now and again a police assurance to the reporters that "the net tightens" or "the lightning is about to strike."

But so much tightening of nets and no fish, and so much thunder with no lightning, made the public weary. The sensation had not been dramatic enough in its staging for a lasting scare, and those futile detective tactics hurried it on to an anti-climax. Before the month of May had run much more than half its course the sensation was over and detective chatter about the postal bombs had lost its headline value.

Hardly, however, had that "May-day" terror subsided when the public was terrorized anew by the June bombardments. From no less than seven cities there came reports on the 3d of June, 1919, of bombing assaults upon residences the night before. From Philadelphia two explosions were reported, one in the rectory of a Roman Catholic church and the other at the residence of a business man. In Paterson the reported object of attack

was the residence of a silk manufacturer. In Boston it was the residence of a judge—that of a Congressman in one of the suburbs being also noted in the list. From Pittsburgh six explosions were reported, one of which damaged the residence of a Federal judge. At Cleveland the reported explosion was at the home of the Mayor. By none of those explosions was anyone injured. But in New York, where the residence of Judge Charles C. Nott was partly wrecked, a watchman in front of the house at the time of the explosion was killed by it.

The most sensational explosion of them all was at Washington. It damaged the front of Attorney General Palmer's residence. Nobody was physically injured by it, however, except the wretch who is supposed to have been placing the bomb; and of him, if in truth they were his, there were found only unrecognizable bits of flesh and shreds of clothing.

Public excitement revived and detectives kept it boiling. The newspapers were again ablaze with police reports of rapid progress in solving the diabolical mystery. Sleuths were again hot upon the trail. The "ablest" men in their line were working night and day upon the theory that the explosions of June were related to and were a part of the postal bomb-conspiracy of May. The clews to each were shrewdly expected to intertwine, so that the facts ascertained in running down the one plot would be of service in running down the other. Arrests were made quite freely, but no charges

were preferred. A New York deputy police commissioner declared that "he would have the culprits in custody in forty-eight hours." Agitations began for laws to deport all alien "radicals," to curb American agitators, and to punish persons who were active in "stirring up discontent."

A noted private detective had been promptly appointed by Attorney General Palmer as Chief of an Information Division in the Department of Justice. This Division became at once a news-distributing center and a secret-police plexus. The police of the whole country were sensitized, and the bomb-throwers were hourly on the verge of capture. A confusing hue and cry which surcharged the air, stirred the public mind with fear and hate.

But panics are like wild beasts in more senses than one. Unless they have something to feed on they die; and for lack of substantial sustenance the excitement over the June explosions, like that of May over the explosive postal packages, began by the middle of the month to languish.

Then a third horror was sighted in the offing. The "radicals" who were responsible for the June explosions and the May-day postal packages were discovered by look-out detectives to be about "launching" a campaign of terrorism to begin on the approaching Fourth of July. Possibly the bomb operators, shocked by the fate of their "comrade" who was supposed to have been annihilated while bombing the Attorney General's residence in Washington, were too timid to play again in the role assigned them. Possibly the detectives were

able to stop the terroristic "launching." At any rate, no campaign of terror was "launched" on the Fourth of July next following the explosions of June.

As to the origin of those May and June events, there were conflicting guesses. Detectives and their employers saw in the crimes indications of nothing but a gigantic conspiracy of enemies of law and order organized to destroy the American government and to abolish the institution of private property at a swoop. At the other explanatory extreme were "radical," "socialistic" and "free-thinking" persons, some of whom were reported as asserting that "the bombs were the work of an *agent provocateur* employed by a private organization."

An unusual though in its general bearing not wholly improbable surmise was ventured by the postal clerk whose vigilance had frustrated the bomb conspiracy of May. His surmise is especially valuable because his opportuities for observation had been exceptional, his veracity was manifest, and he had neither the incentive of the detective nor the impulse of a faddist to spring at seductive conclusions. This young man of twenty-seven, who had come to the United States from Russia when a boy of seven, referred to himself in the New York American of May 1, 1919, as having "had a little better luck than most Russians," and continued: "During the twenty years that I've been living among these wretched poor and starving ignorant people, I've had my eyes

opened. They don't want to do anything wrong, but what can they do? I don't condone the things these fanatics did. Nobody in his right mind would. But I couldn't say what I myself would do if I were desperate." He had preceded those explanations with this statement: "There's too much unrest and too much suffering in living conditions nowadays to keep out of ear-shot of anarchistic talk. I've heard it in the jammed and sweltering subways to and from my home every day for months. And each day it is more widespread. Of course, there doesn't seem to be much way of getting at the fanatics who did this"—the mailing of the May-day postal bombs—"and if they could be found, what good would that do? When you look at it sanely you know that no possible good could come from acts like that. The fanatics want to kill men like Morgan and Rockefeller because they are rich and the fanatics themselves are starving. But they don't stop to think that men like that never trouble to open their own mail, and some helpless servant or underling is the victim—some one of their own class who, may be, is skimping and starving along on as little money as the anarchists. Men who see their children in rags and starving, and their wives slaving and starving, don't reason things out, though. I know because I've lived among them all my life, even though I've been a little luckier than millions of them. They get mad like starving beasts. And a starving beast has just one passion—to kill. Men want to kill the men

who are grinding them down to misery, and they go about it as madly as beasts."

But that young man's inference, while suggestive of industrial conditions that could inspire such venomous crimes as the one he detected in May, 1919, and the more disastrous one of June, may not be much nearer to a correct explanation than the surmises of "radicals," that detectives "planted" the bombs, or those of detectives, that they were demonstrations of a vast conspiracy of revolutionaries. No comparison is possible, however, for no discoveries have been made.

This lack of real "leads" is remarkable—remarkable enough to be almost significant. How was it possible for so gigantic a conspiracy of revolutionaries, if that is what it was, or so desperate an outburst of proletarian passion, if it was that, to have escaped detection when most of the detective agencies of the country, public and private, regardless of expense and frequently of lawful methods, were pursuing the perpetrators of its crimes with tireless zeal? There is nothing comparable to this enigma except the fruitless efforts of the detectives to fix responsibility for the disastrous explosion in Wall Street, New York, which occurred at mid-day more than a year after the two criminal episodes of May and June, 1919.

Perhaps the most considerate explanation would attribute these failures of the detectives to their fixed mental attitude. Instead of approaching the bomb mysteries with minds set upon solving them regardless of consequences, they were predeter-

mined to seek a particular origin. No clue interested them unless it promised to lead back to an anarchistic conspiracy.

The newspaper reports of that time, dealing as they did so liberally with detective activities, theories, suspicions, surmises, predictions, fake discoveries, agilities and failures calmly described as triumphs of the detective art, recall Mark Twain's comic fable of "The Stolen White Elephant." On its way from India to England by way of New York, the white elephant of Mark's story was temporarily quartered in Jersey City pending resumption of its voyage. There it got spirited away, mysteriously stolen—an animal 19 feet high, 48 feet long from trunk-tip to tail-tip, dull white of color, and as it walked making a footprint in the ground like the mark of a barrel-end in snow. Upon notification and offer of reward by the elephant's keeper, the entire detective outfit of New York, uniformed in plain clothes, was put upon the stolen elephant's trail with strict injunctions of secrecy. Then the reporters were called in by the detective chief, and the next day the newspapers were full of the story. Meanwhile the detectives got on the trail of the elephant. One found a clue in upper New York State, another in New Jersey, another on Long Island; and so on and so on came the clues from New York and New Jersey and Pennsylvania and Delaware and Virginia and Michigan. The papers were again and again burdened with detective theories, as new and ever new and never failing clues were discovered. But the never

failing clues always failed. At last, however, the stolen white elephant was accidently found in the basement of police headquarters. It was dead—and worse. Had Mark Twain been living and had his absurd story of the stolen white elephant not been published before, one might easily have mistaken it for a carefully studied satire upon the detective operations for uncovering the mystery of the Wall-street explosion of 1920 and that of the bombs of May and June, 1919.

Only one conclusion, not a flattering one, seems possible when the facilities of the detectives of the Department of Justice are considered. They are referred to in the official report of the Attorney General for 1920, where he describes a card index in his Department as "containing over 200,000 cards giving detailed data not only upon individual agitators connected with the ultra-radical movement, but also upon organizations, associations, societies, publications and special conditions existing in certain localities." The work upon this card index, so the official report proceeds, "is carried on by assistants especially trained for the purpose and who are well informed upon the general movements in the territory over which they have supervision." And while this work "was at first confined solely to the investigations of the ultra-radical movement, it has now [1920] expanded to cover more general intelligence work, including not only ultra-radical activities but also to the study of matters of an international nature as well as economic and industrial disturbances incident thereto."

Consider the relation of that statement to results accomplished. When it is considered that notwithstanding all the kaiseristic police mechanism which it describes and implies, no disclosure whatever has yet been made of any responsibility for the so-called "anarchistic" or "ultra-radical" bombing of May and June, 1919, nor for the Wall-street explosion of 1920—when that statement and that fact are contrasted, what inference is possible, in all reason, except that the crimes were not of "ultra-radical" origin, or else that the detectives were grossly inefficient?

But the origin and significance of the three bomb episodes are of less importance to my narrative than the psychological effect of the two that occurred respectively in May and June, 1919. Whether those crimes originated with revolutionary conspirators, with provocative agents among detectives, or with crazy cranks, and whether the detectives craftily evaded discovering the perpetrators or were grossly inefficient, the psychological effects were identical.

It was humanly natural that Attorney General Palmer should have been nervously disturbed by the June explosion in front of his residence. Powerful enough to annihilate the supposed perpetrator, that explosion would have wrecked the building and slain its inmates had the explosive material been better placed for its apparent purpose. Consciousness of an escape so narrow, supplemented with assurances of trusted detectives that "radical" agitators were promoting these crimes on a

vast scale, could over-excite even less dramatic men in Mr. Palmer's place. It is not surprising, then, that he begged of Congress an enormous appropriation of money for rooting out the conspiracy with which detectives thrilled his imagination but of which they have been utterly unable to produce substantial proof.

The "red" crusade that Attorney General Palmer consequently organized has been attributed to his political ambition. That this object was extensively and intensively served by the crusade is doubtless true, for popular frenzy over "red" conspiracies rose at one time to such a pitch that there was much political capital in a reputation for trying to smash them; and that Mr. Palmer's supporters for the Presidential nomination of 1920 ignored this advantage in their campaigning is not likely. But though the "red" crusade served political ambitions—and many a politician of both parties besides Mr. Palmer's cohorts made it do so—it probably got less impulse from the Attorney General's political aspirations than from the nervous state into which he must have been precipitated by the bombing of his home.

Nervous apprehension would most readily account for his becoming that easy dupe of detectives which for a time he seemed to be. His weakened judgment in weighing their reports showed at the very outset. Making an appeal for appropriations before a committee of Congress on the 12th of June, 1919, he climaxed with a statement which, childish as it now appears, doubtless seemed true

to him when he made it. Although he seemed, as the Baltimore Sun put it, to scent "a bolshevist plot in every item of the day's news," he really depended for his facts upon detectives who knew exactly what they really wanted. So inspired and evidently excited by the terrifying circumstances of the explosion at his house, he felt driven to say: "We have received so many notices and gotten so much information that it has almost come to be accepted as a fact that on a certain day in the future, which we have been advised of, there will be another serious and probably much larger effort of the same character which the wild fellows of this movement describe as a revolution, a proposition to rise up and destroy the Government at one fell swoop." The nerve-racked significance of that climax, made by a responsible Cabinet officer to a responsible committee of Congress, in no spirit of levity but as a solemn disclosure of a really formidable conspiracy to "seize the moon by the teeth," sufficiently accounts for the Attorney General's amazing management of the "red" crusade.

Although Congress did not at once make as large an appropriation as the Attorney General asked for, it made one in June and another in December which aggregated more. With these funds at command, the private detective whom the Attorney General had already selected to manage the esoteric activities of the "red" crusade—his name being William J. Flynn—a man whom at an appropriations hearing he described as "the greatest anarchist-expert in the United States,"

one who "knows all the men of that class" and "can pretty nearly call them by name," turned the Department of Justice into an agency for stimulating the popular delirium which the postal bombs of the preceding May and the explosions of June had generated.

CHAPTER V

PREPARATIONS FOR THE "RED" CRUSADE

To the solicitations which the Attorney General made to Congress for funds for his "red" crusade, the only response of Congress was its regular June appropriation and a deficiency appropriation the next December. They aggregated $2,600,000. But those appropriations were explicitly for "the detection and prosecution of *crimes* against the United States," and for that purpose only. The sole semblance of authority to spend any of that money for anything else would have to be found in a clause of both appropriation Acts which authorized "such investigations regarding official matters under the control of the Department of Justice or the Department of State" as might be directed by the Attorney General. But this clause, though it would have authorized expenditures for deportation activities if the expulsion of aliens had been "under the control of the Department of Justice or the Department of State," could not be so construed inasmuch as alien expulsions were not under the control of either Department. They were, by explicit law, under the control of the Department of Labor exclusively. None of those appropriations, therefore, could be lawfully expended for alien-expulsion purposes unless proceedings to punish

"crimes against the United States" and proceedings to expel aliens from the United States, were in the same legal category—which, emphatically, they were not.

Prosecutions for crimes are judicial; alien-expulsions are administrative. In no aspect of governmental authority may either be identified with the other. Judicial proceedings for the determination of charges of crime and the imposition of penalties, require indictment, jury trial, conservation of all legal rights and strict constructions in favor of the accused; but administrative proceedings for the expulsion of aliens are almost arbitrary, the power of the administrative officer to expel being limited only by his substantial conformity to the deportation statute under which he acts.

Upon information that a resident alien is unlawfully in the country, the Secretary of Labor issues his warrant of arrest, a subordinate arrests the alien, and giving him an informal hearing, reports the evidence to the Secretary, who, governed by it, passes upon the alien's residential rights and nothing but his residential rights. If the Secretary of Labor decides to expel, the courts may challenge his decision upon writs of *habeas corpus*. But if there is the slightest evidence in the record to justify that administrative decision, whatever the counter-proof may be, a writ of *habeas corpus* must be dismissed by the court and the alien turned back for deportation. The reason the courts give for dismissing these writs of right whenever there is

any evidence at all in support of the expulsion decision by the administrative authority, is that the proceeding is Executive and not Judicial. That proceedings for the expulsion of aliens from the United States are not in the same legal category with proceedings to punish crimes against the United States is a principle of law which our courts have invariably maintained.

There was, therefore, no lawful authority for expending, in aid of proceedings for the deportation of aliens, any part of those Congressional appropriations for "the detection and prosecution of crimes." That the agents of the Department of Justice did not themselves believe that they were engaged in detecting Federal crimes when they made arrests in their raids is evident from their policy of releasing raid-caught citizens as soon as they discovered the fact of citizenship. If they were detecting crimes, it was as important to hold detected citizens as it could have been to hold detected aliens. Nevertheless the Attorney General assumed that those appropriations for "the detection and prosecution of crimes" were intended by Congress to enable him to carry on a stupendous "red" deportations crusade at his own discretion.

In his official report for the fiscal year 1920 he found the Federal statutes to be "inadequate to properly handle the ultra-radical situation by criminal prosecution"—the only method, be it remembered, by which any of the appropriations in question could be properly applied to any purpose,—"and consequently the efforts of the" Department

of Justice "became centered upon the activities of alien agitators, with the object of securing deportations of such of those persons as were violating the provisions of" the law "familiarly known as the 'deportation statutes.'"

To effect that object, so this official report explained, "close cooperation was established between" the Department of Justice "and the office of the Commissioner General of Immigration, resulting in the arrest and ultimate deportation of some of the leading anarchists of the United States."

These indications of a diversion of Congressional appropriations from the "detection and prosecution of crimes," for which they were made, to "the object of securing deportations" of such alien agitators as were violating the deportation statutes—for which the appropriations were not only not made, but for which appropriations to the Secretary of Labor (the only official legally empowered to execute those statutes) were refused by Congress—are offered here with no intention of setting up a technical legal criticism. Technically the matter was one for adjustment between the Department of Justice and the Treasury Department. Moreover, American sentiment is usually indifferent to legal technicalities when desirable results are obtained. If, therefore, the aliens in question had been proved to be the dangerous characters the Department of Justice accused them of being, any criticism of that Department's diver-

sion of public funds from criminal proceedings to deportation proceedings would be futile.

Neither is personal criticism of the Attorney General especially intended. The bomb explosion in front of his residence, supplemented with the detective stories that were thrust upon him, would sufficiently account for his remarkable attitude toward those appropriations. The point of the criticism is the ineffectiveness of that diversion of public funds. Not only was the money diverted from its lawful purpose; it was shot into the air.

The Attorney General had in his Department what was known officially as the "General Intelligence Division"—a euphemism for the detective group. This Division was within the sphere of influence of such private detective agencies as those of which Sidney Howard tells in his exposure entitled "The Labor Spy."[1] Quite significant, at any rate, is the attention officially declared in the annual report of the Attorney General for 1920 to have been given by his "General Intelligence Division" to the steel strike and the coal strike of 1919, a significance which is emphasized by a statement in the same official report to the effect that although the offenses of the alien agitators were not crimes, they were responsible for "a consid-

[1] "The Labor Spy; A Survey of Industrial Espionage. By Sidney Howard. With an Introduction by Dr. Richard C. Cabot, Professor of Social Ethics at Harvard. Based on a Report for Dr. Cabot, under the auspices of the Cabot Fund for Industrial Research, by Sidney Howard and Robert Dunn." Reprinted and for sale in pamphlet form by The New Republic, 421 West 21st Street, New York City.

erable amount of the industrial and economic unrest."

The whole "red" crusade seems to have been saturated with "labor spy" interests—the interests, that is, of private detective agencies which, in the secret service of masterful corporations, were engaged in generating and intensifying industrial suspicions and hatreds. It was under these influences, apparently, that the appropriations authorized by Congress "for the detection and prosecution of crimes" exclusively, were in part diverted to the "rounding up" of aliens, not as criminals but as possible subjects for administrative deportation.

Conscious of lacking any particle of authority to pursue the raiding policy of its "radical division," the Department of Justice asked the Department of Labor to "cooperate." What was meant by "cooperate" may be inferred from an incident at a conference on the subject between the two Departments, at which the Attorney General in person was present.

The Attorney General proposed to transmit to the Department of Labor, from time to time, the names of aliens for whom he required warrants of arrest in deportation proceedings.

"When the Attorney General gives orders for warrants of arrest," said he, "the warrants must issue upon his certificate that there is sufficient cause. He will possess the proof but must not be required to produce it."

"But that cannot be done," interrupted a con-

feree from the Department of Labor—A. Warner Parker, a man of long and responsible legal service in connection with immigrant administration.

"Do you mean to tell me," the Attorney General exclaimed, turning towards Mr. Parker and speaking with disputatious emphasis, "that there is no law under which you can issue a warrant for the arrest of an alien when I certify that he is subject to deportation?"

"Mr. Attorney General," was Mr. Parker's calm response, "not only is there no such law, but no such law would be Constitutional if there were one."

Very much, therefore, to the chagrin of the detectives, they learned that in order to carry out their program they must make regular applications to the Department of Labor for warrants of arrest against aliens alleged to be deportable, must do so in each case, must back up each application with proof of "probable cause" in accordance with the requirements of the American Constitution, and must follow those proceedings with lawful and substantial proof that each alien was deportable under the alien expulsion laws.

This jurisdictional relation of the Department of Labor to the "red" crusade harks back to a period antedating by many years the very existence of that Department. Under Acts of Congress relating to aliens a mass of statutory law had accumulated since our Government abandoned its "open-gate" policy of almost a century for the "closed-gate" policy which it began to substitute

in the 1880's. These laws subjected certain classes of aliens to exclusion from the United States, and if residents to expulsion. But no attempt to exclude or expel agitators was made until 1894.

In that year, however, under the leadership of Senator David B. Hill of New York, a fruitless attempt to exclude "anarchists" occurred. The Senate adopted the measure. It made alien "anarchists" inadmissible, and if residents their deportation mandatory; but as it embodied no definition of the term "anarchist," an effort to rush the measure through the House in the last hours of the Congressional session and on the next day after the Senate's favorable action, was defeated by an objection to considering it out of its calendar order.

That objection was interposed by Representative John De Witt Warner of New York. He did not insist upon his objection, however, until the proponents of the measure refused to accept the reasonable terms upon which he offered to withdraw it. What he asked for was the insertion of a definition of the indefinite word "anarchist," so that when the measure became law it could not be abused by administrative proceedings against alien advocates of legitimate societary reforms.

As the comprehensive term for a cult, "anarchism" originated with Joseph Pierre Proudhon about the middle of the Nineteenth Century. Proudhon's anarchism predicated social order upon an assumed self-control of free individuals. It therefore rejected governmental force and thus asserted the logical ultimate of the old American

doctrine, as expressed by Thomas Jefferson, that "the best government is the government that governs least."

Out of Proudhon's anarchistic or no-government philosophy there emerged two principal schools of anarchism—the philosophical or pacific and non-resistant, and the revolutionary or militant—each having its own variety of factional groups. The militant school is terroristic, violently revolutionary; its most familiar slogan is "propaganda by deed" destructively. From the methods and activities of this school, the word "anarchist" has in all probability derived that sinister significance which attaches to its indiscriminate use as a verbal brickbat, handy to the tongue, for hurling in lieu of argument at peaceable propagandists for social readjustments.

Radically different from the militant varieties are the pacific or philosophical anarchists. They are as different as traditional Quakers are from "fighting Quakers." Instead of promoting revolutionary violence for the overthrow of governments, philosophical anarchists advocate theories of peaceable evolution out of what they regard as governmental bondage and into social conditions of individual freedom. They plead for extreme individualism, even as their opposites in opinion regarding societary organization plead for extreme socialism.

Those two primary principles of human association, individualism and socialism, were impressively contrasted by Henry George. Referring to his

having been classed with socialists by individualists and with individualists by socialists, he wrote: "I neither claim nor repudiate the name, and, realizing as I do the correlative truth of both principles, can no more call myself an individualist or a socialist than one who considers the forces by which the planets are held to their orbits could call himself a centrifugalist or a centripetalist."

Alien individualists who, unlike Henry George, had failed to recognize individualism and socialism as social-balancing forces, would have come under the condemnation of that Senate measure of 1894 which Congressman Warner defeated because its sponsors would not specify its application except by the indefinite term "anarchist." If it had been enacted by Congress, Tolstoy would have been included in its comprehensive condemnation. It might have included Henry D. Thoreau if he had been an alien and still living. Possibly even his friend Ralph Waldo Emerson could have been deported had he been an alien with such a law in force in his lifetime. And certainly it would have applied to aliens assenting to some of the opinions of that other American philosopher, the first Henry James, whose greatness Americans may yet be as eager to acknowledge as they are now to acknowledge that of his two justly distinguished sons. For Henry James the elder wrote of republican government, or, as he phrased it, that form of human "government whose only sanction is the will of the whole people," that it removes the possibility of "any more expansive form of merely instituted or

inforced fellowship'' among men, ''and so inevitably gives way itself at last to a free spontaneous society.'' A ''free spontaneous society'' is the essential principle of philosophical anarchism.

After the Senate measure of 1894 for the exclusion and expulsion of alien ''anarchists'' had been defeated in the House by Congressman Warner because its supporters obstinately refused to insert a definition of ''anarchist'' so as to prevent an abuse of the law, its like was not heard of again for nearly ten years. Even the subject matter attracted no attention until an American lunatic with a foreign name who called himself an ''anarchist'' murdered President McKinley, as another American lunatic with a foreign name—who, however, did not classify his insanity—had murdered President Garfield. Inasmuch as President McKinley's assassin called himself an ''anarchist'' and bore an alien name, though a born citizen of the United States, Congress was stirred by his crime into legislating indiscriminately against alien ''anarchists.'' They were listed in the immigration law of 1903 as deportable, the term ''anarchist'' being again undefined.

The ambiguity of this term was observed, though not passed upon, by the Supreme Court in the well known Turner case. The decision of the court in that case, as explained in the opinion of Chief Justice Fuller, upheld the expulsion order of the administrative officer on the ground that Turner ''contemplated the ultimate realization'' of his anarchistic ''ideal by the use of force.'' But

Justice Brewer, while agreeing with the judgment of the Court, he also regarding Turner as "an anarchist in the commonly accepted sense of the term, one who urges and seeks the overthrow by force of all government," interposed this significant comment by way of guarding against making this case a precedent for the expulsion of philosophical "anarchists": "It is *unnecessary to consider* what rights" Turner "would have if he were only what he is called by way of differentiation, a philosophical anarchist, one who simply entertains and expresses the opinion that all government is a mistake and that society would be better off without any." So the Turner case cannot be properly cited as a precedent for expelling philosophical anarchists.

As the statute then read, Justice Brewer's cautionary comment might have been reinforced by elementary principles of statutory interpretation. To have considered that statute as condemning social philosophers who hold to the doctrine of non-resistance in its widest scope, would have violated the principle that every part of a statute must be interpreted with reference to every other part of it. In this statute the word "anarchist" occurred in such close verbal association with expressions of force and violence as to limit the ambiguous word to "anarchists" of the physical-force variety. But, although the immigration law of 1903 did not exclude alien "anarchists" of the non-resistant and orderly school, the revised immigration law of 1917 did.

In its expulsion section this law required the Secretary of Labor to expel any "anarchist," including "persons who disbelieve in or are opposed to organized government." After the revision of 1917, therefore, any alien "anarchist," no matter how pacific his beliefs, disbeliefs, purposes and conduct, was subject mandatorily to deportation to the country whence he came.

Had there been anything lacking in the immigration law of 1917 to terminate the residence here of alien disciples of Tolstoy, or of any aliens who applied the principle of non-resistance to physical force by governments as well as to physical force against governments, the lack was supplied by a supplementary enactment of 1918. Nor did this Act merely identify alien "anarchists" of the philosophical variety with alien "anarchists" of the physical-force variety. It furnished further pretexts for the crusade of 1920 against resident aliens who were classed epithetically as "reds." Especially convenient was this extension of the expulsion laws for the purposes of the "red" crusade because of its undiscriminating membership clauses. But for those clauses there would have been an almost total lack of "reds."

The law of 1918 went upon the Federal statute books more than a year before the climax of the deportations delirium. It was enacted under the influence of monopolistic exploiters of natural forests in the Pacific Northwest, whose objective was the "Industrial Workers of the World," commonly called "I. W. W.'s." Emissaries of those natural

forest interests had urged the Department of Labor to deport alien members of that organization under the deportation law of 1917, without proof of more than mere membership.

Secretary Wilson's refusal, which provoked the enactment of the law of 1918, implied no sympathy with "I. W. W." depredations. These were probably as exasperating, as cunning, as criminal and as logically provoked by federated employers as those that Charles Reade brought to book in his famous novel, "Put Yourself in His Place," which so comprehensively and acutely exemplifies the acid test of its title; and for this lawlessness alien members of the "I. W. W." were arrested at the command of the Secretary of Labor under the law of 1917. They were deported, too, in every instance in which unlawful conduct or assent to unlawful conduct by them was proved.

But Secretary Wilson was of the opinion that no member of an organization can be held responsible for the lawless acts of other members without proof of actual participation or guilty knowledge, unless the lawless acts are authorized, in general terms at least, by the organic documents of the organization. On the question of law here involved he was in complete accord with Attorney General Gregory, Mr. Palmer's immediate predecessor, who had been faced by precisely the same question under the espionage law. The enforcement of the provisions of this War-time law having become especially difficult on account of conflicting sentiments in different parts of the country as to the

"I. W. W." and similar bodies, Attorney General Gregory, declaring and holding to the principle that "guilt is always personal," determined upon a policy under which "no person should be prosecuted or interned solely by reason of his membership in any such organization."

So Secretary Wilson, finding that the organic documents of the "I. W. W." disclosed no lawless purpose but only a legitimate Labor organization, decided that its alien members against whom there was no proof of personal participation in or guilty knowledge of lawlessness by its officers or other members, could not be deported under the law of 1917 or any other deportation law then operative. "Even if some aliens are anarchists and lawless," he explained, "I see no justification in that for making the Department of Labor so."

After Secretary Wilson had announced his conclusion as to the law of 1917, the forest-region influences of the Pacific Northwest thrust through Congress the comprehensive law of 1918 to which I have referred. The private-interest object of this legislation was to compel the Secretary of Labor to deport aliens for mere membership in the "I. W. W." without any proof of individual culpability. But as enacted by Congress—whether from incompetent legislative draftsmanship or from Congressional reluctance to "take orders"—the Act of 1918 fell short of subjecting innocent aliens to deportation for mere membership in any organized body whose authoritatively declared purposes

were lawful, even if some of its officers and members did act lawlessly in its name.

To have deported alien wage-workers merely because they were members of what purported to be a legitimate labor organization, upon no other proof than that some of its officers and members had perverted its declared aims, would have been, as Secretary Wilson suggested, "like deporting alien stockholders in a business corporation, for the rascalities of its directors and their stock-holding confederates."

That is the common sense of the matter, and that is what Secretary Wilson decided after an impartial and careful consideration of the law of 1918 and the facts presented against alien members of the "I. W. W." In his written decision he said: "We will not arrest, detain or deport any alien simply for joining the 'I. W. W.', but we will arrest and detain until we can deport, any alien, whether a member of the 'I. W. W.' or not, who is found advocating or teaching the unlawful destruction of property or advocating or teaching anarchy or the overthrow by force or violence of the Government of the United States or of all forms of law, or the assassination of public officials, or who is in any manner subject to deportation under the immigration laws."

Those wise instructions, however, could operate effectively only at final hearings in each individual case. As to the original arrests the Secretary's instructions were easily evaded. The requirement, for instance, which the Department of Labor made

of the Department of Justice, that there must be proof of probable cause as a condition precedent to the issuing of any warrant of arrest under the alien-expulsion laws, made little difference. The detective auxiliary to the Department of Justice soon turned this Constitutional prerequisite into a farcical formality. Nor in doing so was there much difficulty. The proceedings were on a scale so monstrous, the details were so numerous and so confused and confusing, the arrogance of the detectives was so aggressive, that the Department of Labor, largely dependent as it was upon its Bureau of Immigration, became hardly more than a mechanical toy for the Department of Justice. When the Department of Justice thrust aside all respect for lawful process, and the Bureau of Immigration fell in with this spirit of indifference to Constitutional safeguards, the difficulty of maintaining regularity and preventing oppression rose to the level of the impossible.

Consider the circumstances. Proof of probable cause for an arrest is usually made by an affidavit to the effect that the affiant has been "informed and believes" that the accusation he thereby makes is true. He may in fact have no information nor any reason for belief on the subject. The accusation itself, as well as the oath, may be false. But if this "information-and-belief" affidavit accuses any person of having done something regarding which our laws require proceedings by preliminary arrest, a warrant to arrest the person accused must issue.

Police abuses of that Constitutional guarantee are not infrequent. Professional crime provokes and excuses the abuses, but innocent persons have suffered from the innovation. Such abuses characterized the "red" deportations proceedings. Affidavits of "probable cause" were supplied in "job lots." They were mimeographed forms filled in and sworn to by supervising detectives upon information reported by subordinate detectives. The affiants seldom had any other information; their informants often had none at all. Yet these machine-made affidavits were technically sufficient as a rule to make the issuing of warrants of arrest imperative.

In fact they were often defective. Some were not sworn to. Some were not even signed by the affiant. Some were as blank as when they were ground out by the mimeographing machine, except for names and wear and tear.

Nevertheless, when the Department of Justice delivered what seemed to be affidavits of "probable cause" to the Department of Labor through the Bureau of Immigration with demands for warrants of arrest, warrants were accordingly drafted by an obedient clerical force in the Bureau of Immigration and transmitted wholesale to the Solicitor of the Department of Labor for his signature as Acting Secretary of Labor, the general subject of immigration having been in his charge in behalf of the Secretary for more than a year before the deportations delirium. The Acting Secretary thereupon signed the warrants. Most of them he signed

perfunctorily, depending upon the assurances of the Bureau of Immigration. This was quite in accordance with long practice in the Department. It proceeded upon the mistaken theory that action in expulsion proceedings by the Bureau of Immigration was authoritative, though subject for its effect upon the formal approval of the Secretary or his representative by "signing on the dotted line." Even if there had been no such long established practice, it would have been impossible for the Solicitor, Acting as Secretary, to exercise scrupulous personal care in every case in which the Bureau of Immigration recommended a warrant of arrest and vouched for its legality. His other responsibilities were various and exacting, and the warrant-case work was itself at that time overwhelming.

The arrests pursuant to those warrants were made with a manifest purpose on the part of the detective force in the Department of Justice to hold the arrested aliens in confinement indefinitely. Three large facts went to prove this purpose. One was the dilatory attention given to the cases in the Bureau of Immigration after the arrests had been made, and manifestly at the instigation of the Department of Justice with which the Bureau was at the time "co-operating." Another was the known impracticability of deporting the prisoners at that time, the country whence most of them came being Russia, and communication between that country and this being then under indefinite suspension. The third was the insistence by the

Department of Justice upon amounts of bail out of all proportion to any cause for arrest except offenses of a high grade to be tried in court, and upon conviction to be severely punished.

At that time the detective chatter was not about a horde of harmless members of societies which to most of the horde appeared to be social, or educational, or industrial; it was about bomb-throwers, such as those who had fractured the front wall of the Attorney General's residence and put explosive packages into the mails. Nor were representatives of the Department of Justice impressed with the commonsense thought that as they pretended to have proof of monstrous conspiracies, and identifications of the worst of the conspirators, criminal prosecutions instead of non-criminal proceedings for deportation (criminal prosecutions sustained by real proof of that monstrous criminality, of which, however, no traces afterwards appeared in the deportations proceedings), would have been the upright and downright American policy to pursue.

Their purpose was as clear as it was oppressive, unlawful and un-American. It was to imprison their captives indefinitely. If the Secretary of Labor were too conscientious in his Americanism to co-operate with them in disregarding that implication of the Constitution which secures the privilege of bail to resident aliens and citizens alike, then, in spite even of its explicit inhibition, bail must be fixed at a financial figure beyond the reach of the prospective captives. It must be twenty

thousand dollars, or ten thousand at the least, in every case in which the secret-service auxiliary of the Department of Justice made the demand.

But Secretary Wilson refused to set the bail at so high a figure without proof in individual cases as they arose of some necessity for it. He compromised, however, upon one thousand dollars, with leave to the Department of Justice to move for an increase in any case upon special proof, and with leave to each prisoner to apply for a reduction.

The spirit in which the detective auxiliary of the Department of Justice received this concession may be inferred from the fact that its agents fell into the habit of insisting, with hardly any discrimination, upon bail in the sum of ten thousand dollars; and through undue influence with timid immigration officials, they often succeeded in arbitrarily imprisoning aliens for days and weeks, in some cases for months, in default of bail far beyond the financial limit which the Secretary of Labor had set—aliens against whom there was no evidence of atrocious activities or purposes, and often none of anything more than innocent membership in a proscribed organization—in some instances not even so much as that.

The unwarranted influence of the Department of Justice upon field officers of the Department of Labor in its Immigration Service is impressively illustrated by an incident at a western Immigrant station. An official of the Department of Labor duly authorized and known by the immigration officer in charge to be so authorized, advised this

officer to reduce the bail of several of his "red" prisoners from the inhibitive sum of $10,000 to the $1,000 prescribed by the Secretary of Labor. The officer replied that he was not sure that the Department of Justice would accept or agree to a reduction!

He might as reasonably have expressed doubts about the disposition in that respect of the Governor of Oklahoma or the Mayor of Milwaukee. Even that usually level-headed and efficient immigration official, who knew perfectly well that the Department of Justice possessed no authority in the matter, had been demoralized by the sorcery spell. He was not alone. There were few Inspectors in Charge who came in contact officially with the Department of Justice detectives without losing their official poise.

One of the first of the excessive bail cases to come to my attention was that of an alien dealer in "antiques" at Washington. He had been arrested by Department of Justice detectives who searched his premises incidentally. The arrest was made under a Department of Labor warrant, but the search was under the authority of no warrant and was therefore unlawful. The prisoner's bail had been noted in the warrant of arrest by the Bureau of Immigration, upon request of Department of Justice detectives, at ten thousand dollars, and with that notation upon it the warrant of arrest received—perfunctorily and without opportunity for the prisoner to be heard—the Department's authorization, the detectives having repre-

sented the alien to be a particularly dangerous man. Ten thousand dollars was twenty times the usual bail in deportation cases and ten times the amount fixed upon by the Secretary of Labor at the conference mentioned above.

Unable to furnish bail in that grossly excessive amount, this alien was detained in close custody for several days, being meanwhile subjected to one of those unlawful inquisitions that are commonly known as the "third degree." Finally, however, he was given a regular hearing before an Immigrant Inspector. The proof against him having been incorporated into the record, he deferred offering evidence in his own behalf until he could secure release on bail. To that end he moved for a reduction of bail, and upon the proof supplied by the Department of Justice and embodied in the record I heard and decided his motion.

The evidence showed that the search of this highly dangerous alien's "antique" store had uncovered an obsolete pistol (loaded so securely that the alien had been unable to withdraw the charge), a modern pistol (unloaded) and an antique dagger. They had been purchased by the alien in a job-lot of "antiques" a year and a half before. No ammunition of any kind was disclosed by the search. There was, however, found, besides the pistols and the dagger, a small library in the alien's living room. It contained "radical" books, about sixty volumes, all isolated publications—none in quantities for distribution. Some were socialistic, some were anarchistic, some were "just literature."

George Eliot's novels were conspicuous in this menacing collection. Every other book, also, was of a kind that any thoughtful man interested in social subjects might have in his collection of books for reading. The alien denied being an anarchist. He claimed on the contrary, to be a socialist and to hold a belief against "the form of government as it existed." That he would, if deportation were directed, be released on writ of *habeas corpus* for absolute lack of evidence bringing him within the scope of the alien-expulsion laws, seemed to me certain, so completely was all such evidence lacking. There was no proof in the record to suggest even the possibility of further proof. If the hearing before the Immigrant Inspector had been closed, I should have cancelled the warrant of arrest. But on its merits the case was still in the Inspector's hands; I had to deal only with the question of bail.

Notwithstanding the utter lack of incriminating proof, the representatives of the Department of Justice were insistent, and they were supported by the Commissioner General of Immigration in person, that the bail be not reduced below five thousand dollars. In the slang of the day, "thirty cents" would have been appropriate bail in this case. But as the immigration laws required a minimum of five hundred dollars, I reduced the bail from ten thousand to five hundred.

No sooner had this "antique" dealer been released on bail in that amount, than the Department of Justice detectives turned to the criminal courts of the District of Columbia. At their instance a

magistrate issued a warrant of arrest in criminal proceedings, exacting bail in ten thousand dollars, the amount which had been originally required in the deportation proceedings. His exaction was reduced by a local court of record to five thousand, and upon giving bail in this sum the alien was released pending action by the grand jury—deportation proceedings being totally abandoned. Months went by but no indictment came out of the grand jury room; and when three successive grand juries had failed to indict, this extremely dangerous "antique" dealer was unconditionally released.

I recount that experience out of its chronological sequence because it exemplifies the animus of the Department of Justice detectives in urging the Secretary of Labor to favor their crusade by exacting excessive bail. Evidently it was part of their plan to imprison "red" captives, the innocent along with the guilty, pending final disposition of their respective cases.

The case of this alien is an instance in point. In the grossly excessive bail exacted for the purpose of prolonging his imprisonment, and in the poverty of proof against him, it is a fair example of the "red" cases which I decided when later in the deportations delirium I became officially responsible for all Labor Department decisions in proceedings under the immigration laws.

Another method of subjecting their captives indiscriminately to imprisonment pending the hearings in their cases, and indefinitely pending resumption of American intercourse with Russia,

came to light as the "red" crusade went on. Its immediate object was to discourage surety companies from giving bail in the regular course of their business, for prisoners in these cases. Gossip had it that the surety companies were in league with the detectives to dam up this accustomed source of bail supply. The matter came plainly into the light, however, in only one instance.

A surety company in New York City intimated that it had been significantly warned of official criticism if it wrote bail bonds for alien "reds" in custody of the Department of Labor in deportation proceedings. Having one of these cases under consideration with a view to accepting an indemnity and furnishing bail, this company, through one of its officials, informed the Department of Labor of the warning and asked for authoritative information. In his letter of inquiry the surety company's official referred to "the bitter criticism" to which any one was "likely to be subjected who in such circumstances assists the alien to procure such rights or privileges as he may be entitled to under the law," adding the commonsense reflection that it should be "obvious that if the Department fixes bail for any particular alien that action in itself is a statement that the Department has no objection to bail being furnished."

In response to the inquiry embodied in that letter I officially assured the writer that when the Department of Labor "fixes bail for an alien in deportation proceedings, whether in the course of the proceedings or pending deportation as the re-

sult thereof, and irrespective of the cause or causes of deportation—either under the general Act of February 17, 1917, or the supplementary Act of October 16, 1918—there is no official objection to the furnishing of bail bonds;" that "on the contrary, the preference of" the Department of Labor "between bail and prolonged detention is for bail, provided only that it be sufficient in amount and in the responsibility of the surety to satisfy the Act of Congress and to secure obedience by the alien to the requirements of his bail bond."

Financed with their appropriations for "the detection and prosecution of crimes," but under the alien expulsion laws and in "co-operation" with the Department of Labor as they boasted but in fact with its Bureau of Immigration, the detectives of the Department of Justice had promoted preparations for their "red" crusade through the latter part of the summer and far into the autumn of 1919, when they launched their first simultaneous raids over a large area of the country, following them immediately with preparations for a repetition of that spectacular performance over a wider area and on a larger scale.

Plans for this new sensation were complete before they came to my attention definitely. The Solicitor had brought about a conference on the subject with the Secretary of Labor and the Commissioner General of Immigration, into which I was at his suggestion invited by the Secretary.

At this conference, which took place on Christmas Eve, statements were made to the effect that

the detective auxiliary of the Department of Justice had demanded of the Bureau of Immigration warrants of arrest approximating 3,000, to be issued immediately in a batch for early execution. The accompanying affidavits of probable cause appeared to the Solicitor to be so flimsy that he refused to sign the warrants in behalf of the Department of Labor as Acting Secretary, without first scrutinizing the proof in each case, and the proof had not been made available to him. The general grounds for the proposed arrests were membership in the Communist Party and the Communist Labor Party. Evidently the detectives intended to make another sensational "round up" of "dangerous" aliens charged in fact with nothing more dangerous than formal membership in a proscribed organization. Secretary Wilson was not sympathetic with those deceptive plans. He feared that the law of the land would again be ignored by arrests and imprisonment of men regardless of whether or not there was incriminating proof. So he directed that the 3,000 warrants be issued or refused in the usual way, upon recommendation of the Bureau of Immigration according to the merits of each case as shown by the proof of probable cause. Consequently the Solicitor as Acting Secretary signed such warrants as the Bureau of Immigration laid before him with its recommendation.

Thus far the Department of Labor had acted co-operatively with the Department of Justice upon the faith of assurances by the Attorney General and his official co-adjutors in the secret service

adjunct of his Department that resident aliens in large numbers and of a desperate type were positively known to be engaged in a conspiracy to overthrow our Government by means of a physical-force revolution, and that the danger was both extreme and imminent. As the crusade went on, however, faith in those assurances began to wane.

If such a conspiracy existed, the Department of Justice produced no proof of it. Nearly all the "conspirators" were wage-workers, useful in industry, good natured in their dispositions, unconscious of having given offense. Some were technically within the proscriptions of the law because they had joined a proscribed organization about the unlawfulness of which persons of more sophistication disagreed. Most of them did not know its objectionable character. Many were "automatic" members, that is, transferred in a body from a lawful to an unlawful group without guilty knowledge on their own part and often without any clear consciousness of the transfer—sometimes in total ignorance of the fact. Others were not proved to be even nominal members. Very few if any were the kind of aliens that Congress could in all reasonable probability have intended to comprehend in its anti-alien legislation. The "red" crusade began to look like a gigantic and cruel hoax, and that is what it finally proved to be.

CHAPTER VI

BEGINNINGS OF THE "RED" CRUSADE

While preparations for the "red" crusade were in progress the Bureau of Immigration called immigrant inspectors to Washington from various stations in the field to advise, to fill out blank warrants of arrest, and to compose advisory memorandums when the records of hearings should have come up to the Department of Labor for decision in the respective cases. Concurrently the detective auxiliary of the Department of Justice drew upon the private-detective supply of the country for "special agents" whom it distributed to various points regarded as strategic, and through whom it made co-operative arrangements with local police officials. The detectives were supplied with warrants of arrest from time to time before their demand for the 3,000 warrants in a batch mentioned in the preceding Chapter, and individual arrests were occasionally made; but the crusade did not begin until November 7, 1919, when the simultaneous raids upon meetings of the Federation of Unions of Russian Workers were "pulled off" in anticipation of the sailing of the "Buford." This November raiding, however, was only tentative—in the nature somewhat of a laboratory experiment. The "red" crusade began

in earnest with the raids of the following January. It was for this exploit that the detectives of the Department of Justice demanded the 3,000 warrants of arrest which the Solicitor as Acting Secretary balked at giving, and regarding which the Secretary of Labor issued cautionary directions to the Bureau of Immigration.

At the time of the "Buford's" sensational voyage as "the Soviet Ark," in which the November raids culminated, the newspapers were given a plenty of publicity-tips from ill-concealed sources. From one of these the New York Times of December 22, 1919, made it appear that the "Buford's" trip had resulted from a campaign which began when Francis Patrick Garvan "joined the staff" of the Attorney General in order "to stamp out the 'red' menace." That remark, quoted from one of the Attorney General's aids, was supplemented with an opinion by his detective chief to the effect that "the goal of the Federal agents was the capture of the leaders, the 'intellectuals' of agitation." Other official "leaks" for the use of reporters and the agitation of public feeling were to the effect that "with the sailing of the 'Buford'," to quote further from the Times of the date noted above, "came assurances from the Department of Justice, which brought about the round-up" of November, that "more are to follow." According to these leaks, "one group of radicals consigned to the next boat," to quote the same paper of the same date, was "reported on its way to New York" and plans were set "to continue deportations until" the De-

partment of Justice should have "considerably lessened in number the 60,000 'reds' who were said by the Attorney General" to be "in the United States." The preliminaries to the spectacular "Buford" expedition were typical (except that the Secretary of Labor refused to risk repetitions of the "Buford" experiment) of the whole crusade of which that expedition was an incident—a crusade for deportations of aliens regardless of personal culpability and by methods repugnant to American ideals.

The details of those repugnant methods were not in all instances as fully and undeniably revealed as they were in one. In this instance a private detective agency of Pittsburgh had employed an alien with a criminal record to procure "submarine" or "undercover" information about the activities of workingmen employed by one of its clients. His work consisted in part of organizing "radicals" for the purpose of causing them to be deported if the company employing the detective agency were to think best. In the course of this work the "undercover" man cultivated the friendship of Russian "radicals," and to facilitate his operations he joined the Socialist Party and then the Communist Party. Of the latter he became financial secretary locally, and for it he organized "locals" and solicited members. He reported daily to the detective agency that employed him, the detective agency forwarded his reports to its client, and the client furnished information at its dis-

cretion to representatives of the Department of Justice.

Upon information so obtained some of the raids to be described were made. In one of them this provocative agent was arrested along with his dupes. He did not feel disturbed at first, for he had been assured by Department of Justice agents that although he would be deported to Russia with the others, "so as to shield him from suspicion," he would be brought back in due time and be given a job in the Department of Justice; but when actually facing deportation a distrustful feeling overcame him and he told his story to the Examining Inspector of the Department of Labor at his "warrant case" hearing.

That this instance of repugnant detective methods was neither a solitary one nor the worst in connection with the "red" crusade, is a fair inference from the following news item which appeared prominently the day after the January raids in the New York Times: "For months Department of Justice men, dropping all other work, had concentrated on the 'reds.' Agents quietly infiltrated into the radical ranks, slipped casually into centers of agitation, and went to work sometimes as cooks in remote mining colonies, sometimes as miners, again as steel workers, and where the opportunity presented itself as *agitators of the wildest type*. . . . Several of the agents, undercover men, managed to rise in the radical movement and become, in at least one instance, the recognized leader of a district."

The November raids having through such methods proved successful for the purposes of the detective auxiliary of the Department of Justice, the deportations crusade for which there had been such elaborate preparations and experimenting began in earnest with the raids of January 2, 1920. Their main objective being the sensational deportation in cargo lots of alien members of proscribed organizations, these raids concentrated upon alien members of the Communist Party of America and of the Communist Labor Party.

Those two parties were organized secessions from the Socialist Party, which had figured prominently in American politics, national and local, for a quarter of a century. The "left wing" of the Socialist Party had assembled a convention at Chicago early in September, 1919, to form a rival organization, and this convention organized the Communist Party of America. But a large minority, representative of a group which in the Socialist Party occupied middle ground between its "left wing" and its "right wing," opposed the Communist Party platform, and, upon its adoption, seceded from the convention. Forming still another organization, these seceders from the secessionists promulgated a distinctive platform for what they named the Communist Labor Party, which thereupon became a rival of the Communist Party in the United States.

The Communist Party having by its platform committed its membership to the revolutionary manifesto of the Third Communist International,

Secretary Wilson was of opinion that its alien members were subject to deportation for belonging to an organization which advocated the overthrow of the Government of the United States by force. He therefore authorized warrants of arrest for aliens against whom there was proof of probable cause for adjudging that they were members. This was in accordance with the proscriptions of the supplementary law of 1918.

Overlooking in the exciting circumstances a vital difference between the platform of the Communist Party and that of the Communist Labor Party, Secretary Wilson also authorized warrants of arrest upon probable-cause proof of membership in the latter.

Both authorizations were afterwards formally and vigorously contested at full hearings before the Secretary, and in extended written opinions following the hearings, he decided to revoke his original decision against the Communist Labor Party but to affirm his original decision against the Communist Party.

Meanwhile, however, warrants for the arrest of members of both organizations were in preparation in the Bureau of Immigration upon demands of the Department of Justice for the large batch of which the previous Chapter tells.

In expectation of the issuance and execution of those warrants, an important alteration was made in the deportation rules of the Department of Labor. Under a previous administration of the immigration laws the rules had placed at the

discretion, very largely, of immigrant inspectors, in hearings where they acted as examiners, the right of arrested aliens to have counsel for the protection of their legal privileges. Some examining inspectors habitually refused that right until important legal privileges which counsel might have conserved had been ignorantly abandoned. Even such very substantial privileges as that of cross-examining adverse witnesses were not infrequently lost.

Courts had now and then commented with some severity upon this indefensible practice, and Secretary Wilson, after investigating it, altered the rule so as to allow arrested aliens the benefit of counsel from the moment of their arrest, as is required by American ideals of fairness in all proceedings involving deprivation of personal liberty.

Whether or not the later rule had embarrassed the detective crusaders in their November raids, or whatever may have been the cause, the Bureau of Immigration managed, in preparing for the January raids, to have the later rule displaced by the older one. Advised by the Commissioner General of Immigration, the Solicitor made the substitution as Acting Secretary. The change seemed to him at that time as of little moment. It appeared only to suspend rights to be represented by counsel until the "superior rights of the Government" had been conserved. But as the substituted rule had previously worked in practice—the Solicitor was not familiar with its operation then, he having come into the Department after its

alteration—so it worked when restored. It gave to examining inspectors a discretion so wide that most of them, affected by the delirium of the period and cowed by the dictation of Department of Justice detectives, completely ignored the legal rights of aliens thus put at their mercy.

When the actual operation of the resuscitated rule came to the Solicitor's attention, his democratic sense was outraged by its abuses, and he frankly laid the whole matter before Secretary Wilson who at once revoked the oppressive rule and restored the equitable one which it had displaced. This restoration came, however, too late to conserve the rights of many a victim of the reckless "red" crusade.

After completion of preliminaries for the January raids upon meetings of the Communist Party of America and of the Communist Labor Party, and less than a week before the raiding began, the detective auxiliary of the Department of Justice issued to its field agents confidential instructions for the projected raids. Among other exactions, the field agents, while executing Labor Department warrants of arrest, were required to seize books and records of the two organizations in order to prove memberships, to arrest officers of the organizations if they were aliens, to make a thorough search of his person "upon apprehending an alien," and, "if found in groups in meeting rooms," to have aliens "lined up against the wall and there searched." The method of gaining access to "meeting places and residences of the

members'' was left ''entirely to'' the ''discretion'' of the field agent with reference to procuring ''a search warrant for such premises,'' and the distinct understanding was to be ''that the arrests'' were ''being made under the direction and supervision of the Department of Justice.'' The ''tentative date fixed for the arrests'' was ''Friday evening, January 2, 1920,'' though it was noted in the instructions that this date might ''be changed, due to the fact that all of the immigration warrants'' might ''not be issued by that time;'' but advice ''by telegraph as to the exact date and hour'' was to be sent. The field agents were further required by these instructions to ''arrange with'' their ''undercover informants,'' if possible, ''to have meetings of the Communist Party and of the Communist Labor Party held on the night set,'' information having come from ''some of the bureau officers'' of the Department of Justice ''that such arrangements will be made.'' The agents were also informed through those confidential instructions that ''the grounds for deportation in these cases'' would be ''based solely upon membership in the Communist Party of America,'' or the Communist Labor Party, for which reason it would ''not be necessary for'' the instructed agents ''to go in detail into the particular activities of the persons apprehended,'' yet that it would be ''desirable that wherever possible'' they ''should obtain additional evidence upon the individuals, particularly those who are leaders and officers in the local organizations.''

Along with that special letter of confidential instructions from the detective bureau of the Department of Justice there also went general instructions. Among other duties imposed upon the detectives in the field these required that any "person or persons taken into custody" be not "permitted to communicate with any outside person until after examination" and "permission" given by the Department of Justice; that "if a person claims American citizenship, he must produce documentary evidence of same—if native-born through birth records, if naturalized through producing for" the detective a "copy of naturalization papers."

The detective preparations having been completed for raiding and deporting alien members of the Communist Party of America and of the Communist Labor Party, merely as members and regardless of their personal innocence of any kind of hostility to the United States or sympathy with its enemies, an aggregation of simultaneous raids was made in several cities from the Atlantic far into the interior, and—though with force much spent and the dramatics negligible—even to the Pacific Coast. Such of the warrants of arrest as had been issued in advance served for little more than a pretense of regularity. Arrests were made regardless of warrants, irrespective of the jurisdiction of the Department of Labor by which alone warrants of arrest could be issued, and with extraordinary indifference to law.

Now that the delirium has passed its peak and

little remains of its aftermath but a collection of lawless precedents which may yet serve more efficiently than reckless mobs to shatter the liberty guarantees of the American Constitution, it seems like the memory of a nightmare. But at the threshold of Nineteen-twenty, the outlook excused at least an entry in my journal for the opening of that delirious year. "At present," so that journal-entry reads, "there are signs of an overthrow of our Government as a free government. It is going on under cover of a vigorous 'drive' against 'anarchists,' an 'anarchist' being almost anybody who objects to government of the people by tories and for financial interests."

CHAPTER VII

THE JANUARY RAIDS—A NATION-WIDE GLANCE

Hardly had the year Nineteen-twenty opened when the Department of Justice entered upon the "red" crusade for which its raiding of the preceding November had been a "try-out." Numerously recruited for the occasion from "rough neck" groups of the "strike-breaking" variety and actively supported by local police authorities, the detective auxiliary of the Department of Justice spent the night of the second day in January at raiding lawful assemblages in more than thirty cities and towns of the United States—thirty-three being the number officially reported. Their object was wholesale arrests in furtherance of the plans already outlined for mass deportations of alien members of the Communist and the Communist Labor Parties. The approximate number of arrests officially reported was 2,500.

Those January raids, which resembled the raids of November, were spread over a vastly greater territory and involved the rights of a much larger number of American residents, both aliens and citizens. With more or less vigor—in some places more, in others less—they were carried on, simultaneously by the calendar and the clock, from Coast to Coast—in Maine, New Hampshire, Massa-

chusetts, Connecticut, New York, New Jersey, Maryland, Pennsylvania, Ohio, Indiana, Missouri, Florida, Michigan, Illinois, Wisconsin, Iowa, Nebraska, Colorado, Minnesota, Kansas, California, Oregon and Washington State. Toward public law and private rights, these raids were if possible more defiantly reckless than those of November. Although the raidings in the farther West and in the farther South and North were hardly more than publicity gestures to give a nation-wide appearance to the crusade, those north of the Ohio River and east of the Mississippi, as far north as New Hampshire in the east and Wisconsin in the west, were serious displays.

In the strategic cities and towns of that vast and populous region, they involved lawless invasions of peaceable assemblies—public and private, political, recreational and educational. Meetings wide open to the general public were roughly broken up. All persons present—citizens and aliens alike without discrimination—were arbitrarily taken into custody and searched as if they had been burglars caught in the criminal act. Without warrants of arrest men were carried off to police stations or other temporary prisons, subjected there to secret police-office inquisitions commonly known as the "third degree," their statements written categorically into mimeographed question blanks, and they required to swear to them regardless of their accuracy. The sole excuse for these outrages was the mere presence of the victims at those open and lawful meetings. That the meet-

ings were lawful is evident from the fact that there were no prosecutions of citizens for attending them. And as with public meetings, so with private gatherings and social entertainments. Even homes did not escape night invasions and lawless searches, nor their law-abiding inmates unwarranted arrest. The crusade seems to have been conducted in accordance with the notion which the Attorney General afterwards adopted by way of apology for such lawlessness as he was obliged to confess, that when you suppose you are "trying to protect the community against moral rats you sometimes get to thinking more of your trap's effectiveness than of its lawful construction."

The day after the January raiding began, accounts of it from all quarters were of course broadcasted by the press over the country. Local news reports were gathered by local reporters for their respective local papers, but the material for the comprehensive news stories that went out from Washington, principally through the Associated Press, was supplied by the Department of Justice.

One of these widely published inspirations, justifying the lawless raids by reference to "the seriousness of the attempt to overthrow this Government," told of a discovery by the raiders of four bombs in a Communist Party meeting place. Those bombs were the only ones discovered in all the January raids. Nor was there anything to indicate that even they were bombs except the fact that they were iron balls. Taken to the U. S. Attorney's office those iron balls, deposited for safety in a pail of water,

were exhibited suggestively to local reporters. Their seizure was reported, of course, to the Department of Justice at Washington whence exciting news of a bomb discovery was sent over the country. Those four iron balls must have melted in the pail of water, for they were never heard of again.

The Department of Justice detective in charge, who assured the local reporters, and presumably his chief at Washington, that the submerged iron balls were bombs, forgot this highly sensational feature of the raids when he testified before a Senate subcommittee a year afterwards. The Attorney General also must have forgotten that important piece of proof against the Communist Party, for in his official report he said nothing of bombs, but limited his Department's credit for seizures in the January raids to "large quantities of revolutionary documents" and "many firearms." If the documents were dangerous, the term "revolutionary" was not sufficiently descriptive. Americans ought to be told what is meant by "revolutionary" as applied to documents, before being asked to condemn their publishers. Is not the American Declaration of Independence a "revolutionary" document? Documents containing secret instructions in promotion of an underground conspiracy would be revolutionary in a sense that American ideals condemn; but if among the documents seized in the January raids any were secret, they are secret yet—even as to their existence. Regarding firearms, the evidence is convincing that with the exception of a few ordinary

pistols taken from the pockets or the trunks or the suitcases of individuals whose possession of them signified nothing lawless, the only firearms seized in the January raids consisted of a stack of guns used for amateur theatricals which were found among the stage "properties" of an amateur dramatic society. A careful examination of all the files in the Department of Labor relating to these raids, disclosed, besides those stage-property guns, only four firearms. Might not as many be found upon a search of any 3,000 persons rounded up at any time and anywhere and for anything or nothing?

At no place in all that nation-wide raiding of January, 1920, were any weapons or explosive materials or destructive mechanisms discovered from which an inference of projected crime, private or political, could be reasonably drawn. Even as to criminal thoughts the proof was flimsy—absurdly so in contrast with the severity of the raiding.

CHAPTER VIII

THE RAIDING IN NEW ENGLAND

Meeting halls and family homes in twenty New England cities and towns were subjected to that ruthless night-raiding of January, 1920. Fourteen of the twenty were in Massachusetts—Boston, Chelsea, Brockton, Bridgewater, Norwood, Worcester, Springfield, Chicopee Falls, Holyoke, Gardiner, Fitchburg, Lowell, Lawrence and Haverhill; the remaining six were in New Hampshire—Nashua, Manchester, Derry, Portsmouth, Claremont and Lincoln.

"Concentration points" had been established in both States, mostly in police stations, at each of which an immigration inspector was in attendance with batches of warrants of arrest. Arrests were made, however, quite regardless of warrants.

Nor were search warrants used, though homes were invaded, trunks broken open, personal papers seized and personal privacies shamefully disturbed. Captives were forced to stand in line against the walls of the public-meeting rooms in which they had been caught, and in this position were searched like victims of a predatory holdup.

Blank questionnaires were filled out by the captors as they questioned their captives. At a hall in Worcester the entire audience attending a publicly

advertised meeting, about 200 in all, were questioned, individual by individual, the citizens being thrust out and the aliens, about a hundred, taken to a jail from which all but sixteen were released in the course of the night.

So many prisoners were released with the same contempt for lawful process which characterized the arrests, that the aggregate of arrests in New England can only be estimated. Responsible estimates, however, place the New England total at from 800 to 1,200. A large proportion were released, as arbitrarily as they had been arrested, after periods of imprisonment ranging from a few hours to two or three days.

Altogether the New England raids were disgraceful legal travesties, riotous lynchings in defiance of law by officers of the law; and they were so characterized by a Federal judge of honorable distinction who saw and heard the testimony of the witnesses on both sides. After describing these and other outrages, which had been proved both directly and circumstantially at a hearing on *habeas corpus* writs before him in the United States Court at Boston, this United States Circuit Judge, George W. Anderson, remarked in the course of a comprehensive, convincing and extremely able argument in support of his decision, that "a mob is a mob, whether made up of Government officials acting under instructions from the Department of Justice, or of criminals and loafers and the vicious classes."

Among the meetings raided in New England was one which had assembled to discuss the organization

of a co-operative bakery. It was composed of citizens as well as aliens and in about equal proportions. Yet the entire assemblage of thirty-nine persons was arrested and imprisoned in cells until morning.

A woman and her little daughter, the latter a mere child, who were arrested at one of the meetings in New England, were ruthlessly separated—the child turned adrift at midnight to find her way home in a remote part of the city alone, the mother held captive for a month.

Another woman, a citizen of the United States, was arrested at night in bed at her home, without warrant, by several men not over-refined in manners, who took her to a police station where she was searched and then released.

In one of those New England towns, thirteen women were arrested at a meeting; seven were released at the police station, but the other six were kept in a cell without a mattress through the night and most of the next day.

Those are instances which illustrate some characteristics of the New England raiding. Taken as they are from Judge Anderson's written decision in the *habeas corpus* cases which were tried elaborately on both sides before him, they may be regarded as especially well verified and characteristic. This is true likewise of the other circumstances of the raiding which are here referred to and which those instances serve to illustrate.

Worse even than these characteristic instances

of that raiding was some of the official conduct that followed it.

Captives to the number of considerably more than 400—being from half to a third of the whole number arrested in this part of New England—were taken to the immigration station at Boston and thence to the Deer Island detention place in Boston Harbor. Bitter complaints concerning the circumstances of the arrests and detentions came to the Department of Labor, and in the temporary absence of the Solicitor, who still had Departmental charge of immigration work, the complaints were referred to me. I ordered an investigation by two competent and trustworthy immigration officers, who upon returning from Boston reported that conditions at Deer Island had been for a few days utterly unfit, but were now greatly improved. In explanation of the original unfitness, they assured me that the fault did not lie with the immigration officials at Boston, for too little time had been given to prepare accommodations for the four hundred prisoners delivered at that station by the Department of Justice. By way of verifying their count, one of the investigators remarked to me that the number of prisoners was so large that when they were unshackled "the chains made a pile *that* high"—indicating with his hand a height of about three feet.

"Pile of chains!" I exclaimed.

"Yes, indeed," replied both investigators in one voice. Then one of them, corroborated by the other, explained: "The Department of Justice marched their prisoners through the streets of Boston to the

immigrant station in chains. We know it for we saw photographs of the chained prisoners lined up in a group." One of the investigators added, with a queer glance of the eye, that "nothing was lacking in the way of display but a brass band."

Conditions at Deer Island were at that time still chaotic. There was lack of proper heat for the January weather. There was lack of adequate toilet facilities. Incommunicado exactions were rigidly enforced. One of the captives dashed out his brains in a corridor by plunging headlong from the fifth floor above. He did this in the sight of fellow captives who inferred from their own experiences that he had been crazed by his. Another was committed for insanity. Others were on the verge of insanity from the bewildering circumstances of their captivity.

It was in such bewildering circumstances, terrifying as well as bewildering, that the victims of the raids were given their hearings in deportation proceedings, pursuant to warrants of arrest issued either before or after the raids—some before and some after. Each hearing was conducted by an immigrant inspector authorized by law to conduct such hearings. Each was as a rule held in the presence of a Department of Justice detective who acted both as prosecutor and witness. The accused alien, who in many instances was ignorant even of our language and was not always fairly served by interpreters, was denied the right to have counsel—the temporary rule giving discretion to the inspector having remained in force from less than a week before the

raids till nearly four weeks afterwards. But in spite of circumstances so adverse to the prisoners, the immigrant inspectors were obliged to acknowledge their inability to find cause for deportation against a majority. One of the inspectors is on record as testifying in court that out of from 30 to 35 of the Deer Island "red" cases he had disposed of, he was obliged to recommend cancellation of the warrants of arrest in fully 25, finding even as much as bare technical cause for deportation in less than ten.

Let it be remembered in this connection that mere membership in either the Communist Party of America or in the Communist Labor Party, was in nearly all the cases the only question of fact involved. By what stretch of inference, then, could any undelirious mind have imagined that those droves of captives were dangerous "reds"? Judge Anderson's mind, at any rate, was not equal to that task in passing judgment upon the writs of *habeas corpus*.

"Pains were taken," so he wrote in his decision, "to give spectacular publicity to the raid, and to make it appear that there was great and imminent public danger against which these activities of the Department of Justice were directed. The arrested aliens—in most instances perfectly quiet and harmless working people, many of them not long ago Russian peasants—were handcuffed in pairs, and then for the purposes of transfer on trains and through the streets of Boston, chained together. The northern New Hampshire contingent were first concentrated in jail at Concord and then brought to

Boston in a special car thus handcuffed and chained together. On detraining at the North Station, the handcuffed and chained aliens were exposed to newspaper photographers and again thus exposed at the wharf where they took the boat for Deer Island. The Department of Justice agents in charge of the arrested aliens appear to have taken pains to have them thus exposed to public photographing."

Another abuse which Judge Anderson found from the evidence in these *habeas corpus* cases to have been prevalent in New England—one which appears, indeed, to have been characteristic of the "red" crusade everywhere in the United States—was the employment of provocative agents, after the Czar fashion in Russia, to coax unsophisticated aliens into their web. To these official propagandists of crime Judge Anderson alluded in quoting one of the instructions of the Department of Justice to its agents in the field. The instruction was in these words: "If possible you should arrange with your undercover informants to have the meetings of the Communist Party and the Communist Labor Party held on the night set. I have been informed by some of the bureau officers that such arrangements will be made." This instruction necessarily implies, and Judge Anderson so interpreted it, that, to quote from his decision, "the Department of Justice then had, in these two parties, pretended members having sufficient influence so that they could arrange to have meetings 'held on the night set,'" which "shows that the Government spies were then active and influential in these proscribed parties; they were not

mere onlookers." In other words they were provocative agents—a type of detective long before known in the police systems of autocratic countries as "agents provocateurs."

In those *habeas corpus* cases the Department of Justice was represented by Lewis Goldberg, Assistant U. S. Attorney at Boston, and the aliens by Morris Katzeff, Esq., of the Boston bar.

Judge Anderson was assisted at the hearing by Lawrence G. Brooks, Esq., of the Boston bar, by Professor Felix Frankfurter and by Professor Zechariah Chafee, of the Harvard Law School, each of whom appeared voluntarily as *amicus curiae,* a friend of the court, to represent the public interests irrespective of those of the contestants.

The cases did not come to a hearing until nearly five months after the New England raids. The decision was not handed down until nearly a month later. It is introduced here for its bearing, not upon the lawful liability of the aliens to deportation—an appellate court having reversed it in that respect on the ground that the decisions of the Secretary of Labor were final since there was evidence to support them—but for the light it throws upon the lawlessness of the January raids in New England. It clearly presents the best possible proof of the manner in which the raids were made; and in this respect it has not been reversed by any court, nor could it be upon the convincing evidence before Judge Anderson.

CHAPTER IX

THE RAIDING IN NEW YORK AND VICINITY

If the New England raids were grossly defiant of American ideals and law, they nevertheless had no advantage in that respect over those that were made under the same direction on the same night and at about the same hour by the clock in other American regions.

In my summary of the raids in New England I omitted Connecticut because that State is in another Federal-Court Circuit—a difference in judicial jurisdiction which is emphasized for purposes of geographical classification by the fact that it was principally in the vicinity of New York that the Connecticut raids were made. As part, therefore, of the "red" crusade in New York and vicinity, we have now to glance at the raiding in Connecticut.

Among nearly a score of raided cities and towns in that State were Ansonia, South Manchester, Meriden, Bridgeport, Waterbury, New Haven, New London and Hartford. Active in this man-chase were private detectives of industrial corporations whose skill was supplemented by the energies of ambitious local police. Group arrests were made at night in social gatherings and public mass meetings. The captives were held through the rest of the night and far into the morning hours with-

out a shred of lawful authority. Some were then released and others detained, all having first been subjected to an arbitrary and secret inquisition.

In this part of the New York raiding region, a vigorous agent of the Department of Justice was submissively supported by a bewildered immigration officer. High bail was demanded regardless of Secretary Wilson's orders. Bail actually fixed in warrants of arrest was increased without authority. Friends of prisoners were not allowed to see them. Even counsel retained in their behalf were excluded. And long lapses of time intervened between the unlawful detentions and the lawful hearings.

The center of the raiding in the region we are now passing over, was New York City. An evening meeting here at which about fifty persons were in attendance, eighteen of them women, was in session at the Communist Party headquarters, 207 East Tenth Street, when at the stroke of nine "four Department of Justice men," to quote from the World of January 3, 1920, "dashed up the stairs of the three story building" and "with drawn pistols called 'Hands up!'" All hands went up, and the attendants at the meeting were taken to the rendezvous of the detective auxiliary of the Department of Justice in high-up rooms of a Park Row skyscraper.

At the headquarters of the Communist Labor Party, No. 20S East Twelfth Street, twenty young men and twelve young women attending a meeting were "rounded up" by eight Department of Justice agents and taken to the Park Row rendezvous.

Other raids in New York City were made upon various district meetings and social functions of one or the other of the two proscribed organizations—the Communist Party and the Communist Labor Party. More than 400 persons were arrested before midnight of January 2, of whom 250 were taken, not to the nearest immigration station as the warrants of arrest required, but to the detective rendezvous in Park Row.

Here the prisoners were coercively photographed and "finger-printed" and subjected to unlawful oral examinations, after which those that appeared to their captors to be deportable as aliens were taken to the immigrant station at Ellis Island where, let it be noted, they would have been taken directly if their arrests had been lawful. The others, most of them at any rate, were released as informally as they had been arrested.

Local newspapers noted the fact that no firearms or explosives were found in the New York City raids. But pictures and maps and other innocuous decorations were stripped from the walls of the raided meeting places and, with quantities of propaganda literature, also seized there, were taken to the Park Row rendezvous.

Among the pictures were portraits of Karl Marx, August Bebel and Eugene V. Debs. With those and other confiscated wall adornments, the official force at the detective rendezvous in Park Row amused one another during the day following the raids. Painting Karl Marx's pictured nose red, one of the detectives used the mutilated portrait as a mask, and

thrusting a cigarette through the pictured lips into his own, made this caricature of the founder of Socialism seem to smoke gaily as its wearer paraded about the place—all to the delight of the office force. Similarly mutilated, a confiscated portrait of Debs, the leader of Socialism in the United States, was used as a mask to make fun with. Such behavior would hardly deserve mention in a serious story of those lawless January raids were it not that it reflects in vulgar vaudeville humor the spirit of the delirious crusade to which it was incidental.

A more serious aspect of the New York raiding was sketched for the information of a sub-committee of the Judiciary Committee of the United States Senate, about a year after the raiding, by Charles Recht, Esq., the New York attorney for several defense committees. Summarizing his personal experiences, he testified that on January 2, 1920, he was called over the telephone continually from early in the evening until early the following morning by representatives of different organizations who told him that their places were being raided. "Everybody that was present was arrested," so they told him, "including American citizens; in some places they were holding balls and fairs in a public hall, and everybody at the ball or the fair was arrested and taken to the police station." On the following day 600 out of 3,000 who had been reported to him by defense committees as having been arrested, were taken to Ellis Island. These statements are in substantial accord with the facts as they came to me officially several weeks afterwards, except that they

are set forth mildly. And the New York City newspapers of the two days immediately following the raids published first-hand reports in comparison with which Mr. Recht's testimony is but barely suggestive.

In that part of New Jersey which was within the New York sphere of operations, the raiding was true to form. It was here, however, that the "bombs" were seized—those four iron balls that seem to have melted harmlessly in the pail of water into which they were placed for exhibition.

Another incident of the New Jersey activities was the raiding of a meeting of "radical" Russians while a committee of Poles representing neighbors of a Pole who had just died happened to be present soliciting funds for the funeral. The members of the funeral committee were seized along with all the other persons present.

The raided cities and towns in this State included Jersey City, Passaic, Newark, Hoboken, West Hoboken, Paterson, Bayonne, Franklin Furnace, Harrison and Trenton. New Brunswick, too, should be included in the list, for in that city a Socialist club was raided and drawings of a phonograph invention were seized as possibly representing "the internal mechanism of various types of bombs."

The aliens captured in New Jersey, outside of the New Jersey suburbs of Philadelphia, numbered about 500. Some of them were sent directly to Ellis Island, but most of them were taken to Newark first. They were arriving at Newark during the whole night, were examined there by the detective in charge

of the State of New Jersey for the Department of Justice, and as fast as their examinations were finished were transferred by official boat to Ellis Island —after having been photographed forcibly in groups as they were put aboard. The last boatload left Newark in the middle of the afternoon of January 4, 1920.

Of the 500 captives arrested in New Jersey and massed at Newark, 200 were released (without being sent to Ellis Island) as hopelessly non-deportable; and of the 300 who were sent to Ellis Island it subsequently appeared in the lawful hearings in their cases there that in almost every case the arrest had been made upon no better basis than detective expectations of securing admissions of membership from the captives at "third-degree" inquisitions.

CHAPTER X

THE RAIDING IN PHILADELPHIA AND VICINITY

From Philadelphia the city of Camden, New Jersey, was raided as a Philadelphia suburb along with its Pennsylvania surburb the city of Chester. According to the Philadelphia Ledger of January 3, 1920, more than one hundred persons "out of hundreds seized and examined," had been held under arrest at an early hour in the morning of January 3. "Virtually every headquarters of known radical organizations in this city, Camden and Chester," so this newspaper reported, "was raided last night," January 2, 1920, "by Department of Justice operatives."

At 259 North Sixth Street the raiding was done by a squad of thirty men. On the first floor, members of the Lithuanian Socialist Chorus were caught grouped around a man playing a violin. The music was stopped by the raiders, who put the whole group under guard while they raided the upper floors. On the second floor they found a Technical School to Aid Soviet Russia in session, and, breaking up the session, they arrested those in attendance. The purpose of this school, according to one of its leaders, was the rehabilitation of Russia after order had been established in that country. Proceeding next to the third floor, the raiders found in session a meeting of Russians who had abandoned the Socialist

Labor Party and were organizing another party under the name of the Russian Labor Communist Party. This meeting also was broken up and its attendants arrested. The number of arrests on the three floors of that building aggregated one hundred.

Those, however, were not by any means all the arrests in the Philadelphia region. Wagon after wagon of the city police department backed up to the Federal building in the early morning of January 3, and unloaded captives who, arrested in different parts of the city and suburbs, had passed the night in cells. The details of these arrests are not unlike those of the worst raiding in other regions of the United States—wholesale arrests regardless of Department of Labor warrants or American citizenship, coercive photographing in groups, private police-examinations of the prisoners by search of person, "third-degree" questioning, arbitrary release of some and arbitrary detention of others. From Philadelphia, however, there came the most explicit accusations of "third-degree" treatment in the worst physical-force sense of that inquisitional term.

A concise definition of the police "third degree" appeared in the "Questions Answered" column of the Daily News of Washington, D. C., April 27, 1922, which I quote in full and adopt. It was in these words: "A term applied to a very searching examination of a suspected person by police or detectives. Every effort is made in some of these examinations to entangle and trap the accused into a confession of guilt. It has been more than hinted that some of

these examinations have ended with both physical and mental torture, and that they have been prolonged until utter fatigue and nervous strain has produced a confession utterly at variance with the facts of the case."

In a later issue of the same publication this truly American comment upon the vicious "third degree" practice appeared: "In St. Louis the other day a jury refused to convict a man on trial for murder. The reason was that the defense claimed the police obtained the confession by beating him. If criminals are escaping justice through pleas of police abuse in getting confessions, it is the fault of the police themselves. The whole 'third degree' business is illegal. It is all a form of torture. Our laws forbid it. The man arrested for crime is as sacred in his person as anyone else. The police officer who lays a hand on him or tries in any way to force from him a confession is himself a criminal."

Inasmuch as the accusations of Department of Justice captives at Philadelphia that they were subjected to "third degree" pressure were denied by the captors a positive judgment is quite impossible. There was a circumstantial probability of the truth of the accusations which the denials lacked, but positive testimony was limited to the statements on either side of interested witnesses, and no serious investigation was made. To anyone, however, who is aware of the propensity of detectives to extort "confessions" rather than "run down" evidence, the accusations of those Philadelphia captives make a powerful common-sense appeal.

The "red" crusade in Philadelphia provoked the resignation of the chief local official of the Department of Justice—the United States Attorney for the Eastern District of Pennsylvania, Francis Fisher Kane—a lawyer of high standing and a citizen of patriotic motives and balanced judgment. Feeling that United States Attorneys were involved, even though the crusade was operated not by them but by professional detectives, Mr. Kane had protested against the raids in his jurisdiction before they were made; and concurrently with his subsequent resignation he outlined his reasons to the Attorney General in a letter which is vital with the spirit of genuine Americanism and in itself convincing proof of its writer's profound professional qualifications.

In the course of his letter of resignation Mr. Kane referred to a case that had come to his attention and which as he rightly inferred was a fair sample of many others. It was the case of a Russian-Jew barber whose wife was an American-born Christian—a Methodist. They had six children, all under eleven years of age, the youngest being a baby of six months. This man's employer spoke highly of his character and industry, and Mr. Kane, who could "not regard him as a menace to society just because he was a member of the Communist Party," thought it "not only foolish but an outrage to take him from his wife and children."

A "red" crusade devotee might respond thoughtlessly that Mr. Kane's dilemma with reference to this case must be faced by every judge when dealing with convicted criminals. But the difference is ex-

treme. Criminals are taken from their families only after a judicial trial, which determines their guilt and the necessity for their punishment. Not so with the alien to whose case Mr. Kane referred. He was taken from his family for no crime, after no judicial trial, for mere membership in an organization of which his citizen friends could be members, which aliens were at the most but barely forbidden to join, and which a distinguished and able Federal judge who considered the point carefully held to be an organization that aliens might join without thereby subjecting themselves to deportation. If other Federal judges have decided otherwise the significant fact nevertheless remains that the alien was expected to determine the lawfulness of an organization about the lawfulness of which American judges disagree.

CHAPTER XI

THE RAIDING ABOUT PITTSBURGH AND BUFFALO

Farther to the west, Pittsburgh and Buffalo were central points in the January raiding.

For the Pittsburgh immigration district, which extends over western Pennsylvania and West Virginia, twenty warrants of arrest had been sent by the Department of Labor to the Immigration Inspector in charge at Pittsburgh. Of those warrants, nine were executed under his direction by agents of the Department of Justice. They did not succeed in executing the remaining eleven, but with characteristic recklessness they arrested other aliens without warrants and thrust them into county jails. No accusations even were lodged, in many instances, against the lawlessly arrested prisoners.

The number arrested was about 30 in Greensburg (a suburb of Pittsburgh) and about 85 in West Virginia. A man who had been missed by his friends for a month was finally found in jail—one of those arrested without warrant by the detectives. Later the Inspector in Charge, a competent and undelirious official, procured Department of Labor warrants for about 40 of the West Virginia prisoners and caused the others, about 45, to be released. In the city of Pittsburgh itself there were no lawless arrests—apparently because the prison warden would not receive anyone without a lawful commit-

ment. The 30 captives in the Greensburg suburb were disposed of by the Immigrant Inspector in Charge as he disposed of those in West Virginia.

At Buffalo and near-by towns, including Lackawanna and North Tonawanda, about 150 persons were "rounded up." The arrests in the raiding and within a short time thereafter numbered approximately 153 as reported by the detective in charge at Buffalo for the Department of Justice. Of those captives 31 were released on account of mistaken identity; 9 were turned over to the State authorities on charges of "criminal anarchy" under the New York statutes (they being American citizens and therefore not deportable); 98 were taken over by the local immigration officials under outstanding Department of Labor warrants; and 15 who had been arrested without warrant were held by the Department of Justice until warrants could be procured from the Department of Labor. The charges against these fifteen were that they were members of one or the other of the two Communist parties.

Immigration hearings for the Buffalo region did not begin until January 7. They continued until February 23. A detective from the Department of Justice and an interpreter from the same Department participated in the hearings and virtually conducted them.

Behold the outcome. Out of the 9 citizens who were turned over to the State authorities, 4 were indicted. Out of the alien captives, 1 died in custody, 1 was released at the immigration headquar-

ters in Buffalo, and deportation was proposed by local immigration officials for 111. That proposal had no more legal value than if it had been made by an office-boy. The function of the local immigration officials was to take evidence and transmit it to the Secretary of Labor. Its authority went no farther. When those 111 cases came to me as Acting Secretary of Labor several weeks later I ordered deportation in 24, deferred action in 2, and "cancelled the warrants,"—that is, decided that upon the evidence transmitted to the Department of Labor no lawful ground for deportation was disclosed—in the remaining 85.

Alluding to these 85 "cancellations," the Attorney General, while testifying in his own behalf before a sub-committee of the Senate, remarked that "the trial court" before which the evidence was presented, "found with the Government in 111 out of 112 cases," but "the appellate court . . . made a different disposition." The Attorney General should have known, though he evidently did not unless his remark was jocosely made, that the immigrant inspectors at Buffalo before whom the hearings in these cases were had and who "found with the Government," were not in any degree nor in any sense a "trial court." They were at most merely referees with functions limited to making and transmitting to the Secretary of Labor a record of the testimony in each case. He should have known also, if professionally fit for his official station, that the Assistant Secretary of Labor, to whom he alluded as "the appellate court," was not an

appellate court even by analogy, but, subject only to instructions from the Secretary of Labor and to *habeas corpus* proceedings in the Federal courts, was the court of first instance as well as the court of last resort—the only "trial court" that had any jurisdiction in those cases, the only official except the Secretary of Labor who was vested by law with any authority at all to decide them.

But the Attorney General may be pardoned his blunder, if it was not a joke, when it is considered that he probably depended upon an adviser in the "Intelligence Division" of his Department who in his own testimony before the same sub-committee of the Senate implied that the Commissioner General of Immigration gave official weight to the advice of the immigration inspectors by concurring in their findings. The Commissioner General of Immigration had no other authority in deportation cases, as the immigration laws plainly show, than to execute the commands of the Secretary of Labor or his official representative.

The raiding experiences in Buffalo were responsibly summarized by John Lord O'Brian, a leading lawyer of that city, when in a Bar Association address he said: "The experience of my own city is undoubtedly typical of procedure elsewhere in the country. Early in January there were arrested in Buffalo in several so-called raids conducted by Government and local officials, aided by groups of business men, about 150 aliens, who were taken into custody upon telegraphic warrants issued by authority of the Secretary of Labor. Those warrants

at first fixed universally ten thousand dollars as bail (elsewhere it was fixed at from ten thousand to twenty-five thousand). A few days later this bail was reduced to one thousand dollars. Those prisoners most actively connected with Communist or anarchist societies secured release within a comparatively short time through the aid of their organizations, but the remaining prisoners, who had little or no connection with these societies, being poor wage-earners, found greater difficulty in obtaining bail and thus remained the longer time in prison. A private hearing was given to each prisoner by an immigration inspector who acted as detective, prosecutor and judge, and in some cases acted as interpreter also . . . Out of these 150 cases of aliens seized and jailed at Buffalo on administrative warrants, 75 per cent of the warrants were subsequently cancelled."

CHAPTER XII

THE RAIDING AT CLEVELAND AND SOUTHWESTWARD TO THE COAST

Passing into the farther West by way of Cleveland, we shall find that the raids in that city were similar to those in the East, unless it may be that they were more systematically made and less spectacularly exhibited.

Under the immediate direction of an agent of the Department of Justice, the Cleveland raiding was done by local police. Twenty-five groups of policemen scoured twenty-five foreign sections of the city simultaneously. Invading meeting halls, coffee houses and cafés, they arrested without discrimination except as to sex. But for the fact that women were not gathered in, these Cleveland raids were very like old-time police raids in the "tenderloin" district of New York City.

Men caught in attendance at the raided meetings, and in the coffee houses and cafés, were hustled into automobiles and rushed to the Federal building, where they were subjected to police inquisitions—without counsel, without friends, and at the mercy of inquisitors trained to be merciless. Along with the men, records also were seized. The "faked" news reports about seizures in New Jersey of Communistic bombs lent a sinister air to the reported activities of the Cleveland captives; but

nothing more sinister than club records was found, and the raiding received only scant attention from the local press.

Among the Ohio cities other than Cleveland over which the shadow of the deportations delirium hovered, were Youngstown and Toledo; but nowhere in the whole great region roundabout does the raiding appear to have justified the reports that came out of Washington while it was in progress. Detroit might be cited as an exception, but the circumstances there were extraordinary enough to be reserved for a climax. Meanwhile the material for our story drifts southward through the St. Louis region, and then westward to the Pacific Coast, coming back to Detroit by way of Chicago.

In East St. Louis, Illinois—across the Mississippi from the St. Louis of Missouri—a squad of Department of Justice agents accompanied by immigrant officials, raiding the foreign section at night in automobiles arbitrarily arrested alien residents in their homes and workshops. The circumstances were disclosed by Charles A. Karch, a lawyer of East St. Louis who had recently been the United States Attorney for Southern Illinois.

Mr. Karch testified with reference to a characteristic instance, that the raiding party went at about ten o'clock at night to the home of a Croatian tailor who owned the property and was an applicant for American citizenship. He had not yet gone to bed. They arrested him without a warrant, together with two men who were visiting him. Not only did the raiding party make those arrests with-

out warrants, but they did it "with considerable gun-play." Having then carried the tailor to their automobile, they took him to the city police-station where they subjected him to an examination. After the examination they took him back to his home, compelled him to open his safe, ransacked it and took from it $150 which belonged to a local organization—the proceeds of a dance that this organization had recently given. Having despoiled the tailor's safe, they then took him to the home of the secretary of the local organization, where, without search warrant and notwithstanding that the secretary was a citizen of the United States, they searched his place and seized books, records and papers—private books and papers, as well as those belonging to his organization. After that they went on with their raiding, from house to house. Most of the inmates of the raided houses were in bed, but the agents forced their way in, aroused the men, ordered them to dress, and driving them into automobiles took them to the city police station. There they examined the secretary of the local organization, who displayed a certificate of American citizenship and protested that they were invading his rights as a citizen. But they forced him to go along with the rest of the captives across the river to the city of St. Louis, and directly to the office of the division chief of the Department of Justice, where examinations of all the prisoners were conducted during the remainder of the night. The examinations were conducted without advising the prisoners of any of the rights to which they

were entitled under the law. They were not even informed of the nature of the charges against them.

All these facts, derived by Mr. Karch from statements to him by the captives, were admitted to him by the agent of the Department of Justice to be true.

When asked by the chairman of the Senate subcommittee examining him whether the captives were discharged, Mr. Karch explained that the local immigrant inspector recommended their deportation, but the Assistant Secretary of Labor discharged them. "Were they shown to be members of the Communist Party?" asked the chairman. "Theoretically, yes," Mr. Karch replied, adding, however, that "they were originally members of a Jugo-Slovak international Socialist society," and were not shown to have become members of the Communist Party except by action of the larger organization at Chicago, which, through resolution, transferred its locals over to that party. It was not shown that any action had been taken by the unit at East St. Louis. A form letter from Communist Party headquarters had reached the secretary and was brought to the attention of four or five members at a smoker or a luncheon in the club room, where it was read and ordered to be filed. In due time a charter arrived, which, without any resolution, some of the members hung upon the wall. "That was all the evidence in the record, as I recall it," Mr. Karch added, "which identified any members of this Socialistic organization with the Communist Party." Asked what declaration of principles was set out in the charter, Mr. Karch replied

that "the charter did not at all purport to set forth the principles of the party." In concluding his testimony he stated that "these men were all employed (except the tailor) at the packing industries there, and until Secretary Post discharged them they were out of employment."

Of the raiding across the river in St. Louis, Missouri, no descriptive testimony is available and the local newspapers did not feature it.

From St. Louis westward to the Pacific Coast the arrests were few in number and relatively inconsequential. The 33 cities of the United States in which the January raids were reported from the Department of Justice at Washington to have been made, included Kansas City, Denver, Los Angeles, San Francisco, Portland (Ore.), Spokane, Omaha, Des Moines and St. Paul. But in San Francisco, Spokane and Omaha there do not appear to have been any authentic reports of raidings; and the reported figures for arrests, in Kansas City 100, in Los Angeles 1, in Portland 20, in Denver 8, in Des Moines 16, and in St. Paul (including Minneapolis) 13, are of dubious statistical value.

The arrests in Portland, according to local reports, numbered 22, but only 7 of the prisoners were aliens. The raiding had been upon the Portland headquarters of the Communist Labor Party, an organization subsequently held by Secretary Wilson to be lawful under the immigration statutes. As no charge but membership in this lawful organization was made against the 7 aliens caught in

the deportations raiding at Portland, none were deported.

In the other places westward from St. Louis the raiding does not appear to have been even as important, either in magnitude or lawlessness, as that at Portland. The nation-wide characteristics of the January raids seem to have evaporated in the westward sweep from the Mississippi. In the region of Chicago, however, they continued to challenge national interest.

CHAPTER XIII

THE RAIDS IN THE REGION OF CHICAGO

In this region there was much official confusion, especially in Chicago itself. It seemed to be due to a misapprehension by the States Attorney of Cook County, of which Chicago is the county seat. Overlooking the possible effect upon Attorney General Palmer of that nerve-racking explosion in front of his home and attributing the nation-wide raiding-spectacle to his Democratic ambitions on the eve of a Presidential election, the States Attorney at Chicago, a Republican, marred the dramatics of the national raiding in that city, which had been set as elsewhere for January 2, by "pulling off" a raid of his own the night before.

Originally he had arranged to make the local and the national raiding in Chicago jointly with the Department of Justice on the 2d of January; and for this purpose local as well as national detectives had been gathering what they were pleased to call evidence. But at almost the last moment, political suspicions of the States Attorney determined him to break away from that mutual arrangement and to do his own raiding a day in advance so as to spoil some of the political effect of the Attorney General's "red" crusade. Although his premature proceeding seriously disturbed the Chicago plans of the Department of Justice, especially the pub-

licity plans, its agents nevertheless went through the anti-climacteric performance of making Chicago raids according to the nation-wide schedule.

One of the many places they raided there was a school of which Jane Addams says, in her book entitled "Peace and Bread," that it was one of many that were founded by resident Russians for preparing themselves as skilled mechanics for usefulness in the new Russian state (to which they expected to go), by teaching applied mathematics, mechanical drawing, pattern-work and automobiling, and "where they were so cautious that they did not teach any sort of history or economics." Continuing, Miss Addams makes this description of that raid of 1920 in Chicago: "A general raid under the direction of the Federal Department of Justice 'ran in' numbers of Chicago suspects on the second of January, but an enterprising States Attorney in Chicago, doubtless craving the political prestige to be thus gained, anticipated the Federal action by twenty-four hours and conducted raids on his own account. The immigrants arrested without warrants were thrust into crowded police stations and all other available places of detention. The automobile school was carried off bodily, the teachers, the sixty-four pupils, the books and papers; the latter were considered valuable because the algebraic formulas appeared so incriminating." Among those arrested was a Russian whom Miss Addams had personally known many years, a Tolstoyan and member of a society "composed of Russians committed to the theory of non-resistance"—

a group than which she knew of none in Chicago whose members she would have considered less dangerous. "This man, with twenty-three other prisoners, was thrust into a cell built for eight men; there was no room to sit, even upon the floor; they could only stand closely together, take turns in lying on the benches and in standing by the door where they might exercise by stretching their hands to the top bars. Because they were Federal prisoners the police refused to feed them, but by the second day coffee and sandwiches were brought to them by Federal officials. But the half-starved Tolstoyan even then would not eat meat nor drink coffee, but waited patiently until his wife found him and could feed him cereals and milk."

The more general circumstances of the Chicago raiding have been conservatively described by Benjamin C. Bachrach, a Chicago trial lawyer of general practice and a Republican in politics, who represented nearly a hundred aliens arrested in Chicago for deportation. When testifying he described himself as "a conservative" to the extent of wanting "all the sections of the Constitution enforced all the time."

According to Mr. Bachrach's testimony, Department of Labor warrants were issued to Chicago before the raiding. But those warrants do not seem to have guided the arrests, for the agents of the Department of Justice busied themselves after the raiding in singling out arrested citizens from aliens, and aliens who did not belong to any of the proscribed organizations from aliens who admitted

such memberships. The aliens who denied membership were released after detention for two, three, four, five or six days and even longer. All these had been released at the end of about two or three weeks—the citizens more promptly than the aliens as a rule, probably within from 24 to 48 hours.

Although the raids were professedly made by authority of Department of Labor warrants, a great number of captives were held without warrants for several days and even for weeks after the raiding. The warrants then obtained were issued upon "information-and-belief" affidavits made by Department of Justice agents, charging the aliens with membership in the Communist or the Communist Labor Party. The fact should be emphasized that their information, derived from "third degree" examinations of the respective prisoners by the agents, was obtained after the raids, before application for the warrants, and while the aliens for whom the warrants were got were in the unlawful and incommunicado custody of their inquisitors.

Of 80 Chicago prisoners whom Mr. Bachrach represented, only about seven were found by responsible authority to be deportable. Bail had been put as high in some cases as $10,000, often $5,000; but in most of the cases it was ultimately reduced to $1,000. One alien, a mechanic with a family, was imprisoned from January until some time in March (as a mere member of the Communist Party) because he could not give the $5,000 bail that was

exacted. He was finally released for lack of proof of any deportable offense.

In one group of nine prisoners—all hard-working, simple people, with no feeling at all against the United States—who were charged with membership in the Communist Party, not one had any notion whatever of what the principles of the Communist Party were until its manifestoes were interpreted to them at their hearings before the immigration officials. They had joined the organization because they thought it might influence President Wilson to withhold American troops from Russia, so that their relatives might not be killed. They had not even joined the Communist Party consciously, but were automatically transferred to it by the Socialist organization to which they belonged.

Another group arrested in the Chicago raid was composed of thirteen Italians who, all but the organizer, had joined the group so as to get an education in English and music. Although they were ultimately released, their release did not come until after their friends had given bail for them, and then only from time to time—one now and another four or five weeks later. The person who organized the group was held for deportation. With reference to this group, Mr. Bachrach suggested that the Department of Justice had not been as careful of the liberties of persons as it might have been, for the facts about those innocent men could have been learned before their arrest instead of days and weeks later.

As in most other places over the country, the local immigration officials at Chicago were by no means enthusiastic in their sympathy with the raiding. Arbitrary though the regular procedure in deportation cases is, and trained to the execution of its autocratic methods though those officials were, they did not comfortably stomach that reversion to old-time prussianistic procedure which the Department of Justice had deftly managed to impose upon them. But they were deep in the dark in consequence of what the Department of Justice called "co-operation" between its detective force and the Bureau of Immigration at Washington.

The raids at Milwaukee, Racine, Rockford and other outlying places in the Chicago region, were like those in the larger places though of course on a smaller scale.

One fact in connection with the arrests at Rockford is, however, worthy of special mention. The examining inspector in the immigration service there was as scrupulous about conserving the rights of the arrested aliens he examined as under the circumstances it was possible to be. Although he could not allow them the benefit of counsel while the surreptitiously promulgated rule forbidding counsel remained in force, he nevertheless invariably warned the aliens he examined that they were not bound to answer any questions, and that if they did answer their answers might be used against them. This was a recognition of one of the traditional rights of every accused prisoner under

American law—a right which was almost invariably ignored in the "red" crusade, and which some judges, though hardly bold enough to throw it into the trash barrel, only indifferently safe-guarded.

CHAPTER XIV

THE RAIDING AT DETROIT

In Detroit the January raids were as abhorrent to an American conscience as were those of New England. They lacked none of the vicious features of the New England raids except manacles and chains, and were as spectacular and if possible more shameless in other respects. There were, however, no court proceedings in Detroit as there were in New England, to put the facts clearly and firmly upon record. Yet the facts have been reported by competent and trustworthy witnesses.

Two characteristics seem especially to have distinguished the Detroit raiding. As to treatment of prisoners, it was more persistently barbarous than that of New England, and it produced a reaction in local sentiment which takes this city out of the delirious class in the history of the delirium of which my story tells. The patriotic lawyers of Boston who volunteered as non-partisan advisers of the court, to stand against an official mob in vindication of American law, had their counterpart at Detroit in a voluntary committee of citizens—lawyers, business men and a bishop of the Protestant Episcopal Church—who undertook to relieve Detroit of the stigma which Department of Justice detectives were casting upon her orderly citizenship.

Like all the other January raids, those in Detroit began at about nine o'clock in the evening, local time, on the 2d day of the year nineteen-twenty. Some of the typical circumstances are on record in the testimony of W. C. Garred, the assistant custodian of the Federal building at Detroit where the prisoners were corralled as the raiding went on.

Late in the afternoon of the nation-wide raiding day an agent of the Department of Justice asked the assistant custodian of the Federal building for the use of the fifth-floor corridor as a detention place for "radicals" he intended to arrest that night. The assistant custodian assented, expecting the prisoners to number 25 or 30. But there were 400 prisoners in the corridor when he came to the building on the morning of the 3d of January.

This corridor had no outside windows. It was lighted only through an open court in the center of the building, over which there was a skylight. There was but one toilet. After about the third day the number of prisoners had increased from approximately 400 to approximately 800. It then decreased as the prisoners were given their examinations before an immigrant official.

While they were there, so the assistant custodian testified before a sub-committee of the Senate, the prisoners "had hot and cold water over a slopsink adjacent to" the toilet. As to food, "the friends of these men brought in sandwiches and apples and milk, etc., in suitcases and boxes and bags, and they got food." As to "some of those

who had no friends," the witness did "not know what they got," but guessed that "probably they divided up." He "went through this corridor two or three times—walked through to see conditions," though probably not after five o'clock at night, and found that the prisoners "had no bedding of any kind except newspapers and overcoats and clothing and 110 awnings" that were in the corridor. As to air, "there were no outside windows" and "the ventilation was poor because this was the top floor of the building and all the impure air from the other corridors came up there;" the skylight space being open from the second floor up, "of course all the warm air and heat would go to the ceiling, and it was quite hot up there and rather close." Those conditions continued from the night of January 2 to the forenoon of January 8.

The testimony of the assistant custodian of the Federal building was corroborated and amplified by Frederick R. Barkley, a newspaper man of long experience who afterwards became secretary of the City Club of Washington, D. C. On the 3d of January he had been sent by his paper, the Detroit News, to the Federal building to report the conditions there. Upon arriving at this building he found such confusion among the officials that it was difficult to get any information from them. So he investigated for himself. Climbing one of the stairways to the fifth floor he encountered an iron-bound gate which shut the prisoners within the corridor. Like the lower corridors, the fifth faced a great central court open from the first floor to

the roof. Only two rooms opened out of it. One was a little examination room half way between the fifth corridor and the fourth; the other was a toilet room on a level with the fifth. As he came up to the fourth corridor and looked obliquely upward across the open space to the fifth, he saw "men's heads all the way around this whole space, sticking out" through the openings into the spacious court, and heard "a murmur of conversation and shuffling of feet." Going up to the fifth corridor he saw that "the men seemed to be pretty well packed all the way through there." In this corridor he thought there were then about 600, calculating that the number put there originally had been 400 and that the arrests in a couple of supplementary raids had raised the number to 800 by the day following his visit. He noticed, too, that "the heat from the corridors and the rest of the building sort of welled up" into the fifth corridor where the prisoners were. Besides a skylight over the court there were windows in the walls, but so far apart that it was "rather dim" in the corridor. "The heat was sickening, and the stench was almost overpowering"—so revolting that he "could not stand it very long." He saw prisoners in line to the number of 40 or 50 awaiting access to the one toilet in the corridor. The only accessible drinking fountain was by the side of the toilet and in the same little room. The skylight was very dirty and did not seem to admit much light. If there was any way of opening it for ventilation he did not observe it.

Having made his observations of this wretched place of detention, Mr. Barkley investigated the circumstances under which the prisoners had been brought to it. He found at once that no names had been noted nor any attempt made to classify the prisoners as citizens or aliens. He also learned that women had not been arrested. When the raiders caught women at the raided dances and study classes and halls, they let them go. At the time of his investigation the examinations of prisoners had been going on for about twenty hours. They were conducted in the little room between the fourth and the fifth floor corridors. The prisoners under examination were asked only three or four questions. If they said they were citizens they were immediately released, the examiners for the immigration service appearing to have a fear of accountability for arrests of citizens. Apparently the examiners did their best, shorthanded as they were, to expedite the hearings; but some of the released prisoners were confined as long as six days. While some were coming in others were going out, which accounts for 800 as the highest number at one time although 1000 were arrested.

Describing the raids as he learned the facts in the course of his investigation, Mr. Barkley testified that the largest number of arrests was made at "Shore Hall," the "House of the Masses," a large three-story building in which the Socialist Party had its headquarters. On the ground-floor a restaurant was conducted co-operatively by the Workers' Educational Society and the Socialist

Party. After the Socialist Party had been swallowed up by the Communist Party the title to this property came into litigation, but meetings were held in the hall and business was done at the restaurant as usual. On the 2d of January a dance was going on at the hall when the raid occurred, and all the persons present there except the women were arrested. Even the professional orchestra which was accustomed to playing "at all high-class entertainments," was reported to have been "run in" with the rest. The raiders also arrested all the men who were eating in the restaurant on the ground floor, which, as well as Mr. Barkley could tell from the outside, resembled "any short-order restaurant." An "intelligent girl, more Americanized than most of those who were arrested," and whom he believed, told him while they were together in a lower corridor of the Federal building, that her brother, a prisoner at the time in the fifth corridor, "had belonged to the Socialist Party and when the switch to the Communist Party was made, he did not join the Communist Party because he did not believe in force," but that "he continued to patronize the restaurant" and "while he was eating his dinner there" on the 2d he was captured with the others and had been imprisoned for three days for no other reason than "because he was caught in the restaurant getting his dinner." This girl, who was at the dance in the hall when it was raided, told the reporter further that "they were holding classes in the ante-rooms and the side-rooms there," and that the raiders "broke up

the classes." Several ex-service men were reported to have been arrested at the dance, but these were released as soon as the fact that they were ex-service men was discovered. Even passersby on the street appear to have been swept into the Attorney General's wretchedly constructed "moral rat trap."

Continuing his account of these raids and the subsequent incarcerations, Mr. Barkley testified that after the raids women would come to the Federal Building looking for their husbands, but as the prisoners were transferred to various precinct police stations without a record of their names, some of these women spent five and six days in fruitless searches. In one instance the wife was penniless and had to beg food from neighbors for nearly a week before she found her husband, who had been thrust into one of the numerous detention places.

From Mr. Barkley's evidently fair and reasonably probable account, it appears that 128 prisoners, taken from the Federal building to the Municipal Court building, were put into the "bull pen" at the latter place of detention. This "bull pen" was a cellar room, 24 by 30 feet in area, with one window, one little toilet, one door (grated), floored with stone and designed only for very temporary detentions during court sessions.

Within that "bull pen," furnished only with benches without backs, on which perhaps 20 men could sit, as many as 128 victims of the Detroit raids were held for seven days. They were almost

literally packed in. The only food they had was one cup of coffee and two biscuits twice a day, except as their friends brought food to them. "The conditions were such," said Mr. Barkley, "that Mayor Couzens"—afterwards Senator from Michigan—"informed the City Council that they were intolerable in a civilized city," and "the health commissioner reported the situation" as not only intolerable but "a menace to the health of the city."

Describing the prisoners themselves, Mr. Barkley testified that "they seemed to be simple men, not perhaps very highly educated," but "clean" and most of them "fairly well dressed for workingmen—not dirty looking fellows," not like "what we have been led to believe bolshevists look like—that is, when they were taken in there," but "after four or five days, of course," they showed the effects of not being permitted to shave and of sleeping in their clothes.

That those abuses aroused the indignation of the civic-minded citizens of Detroit is not remarkable. The remarkable fact is that similar abuses aroused no general indignation in any of the other cities in which they occurred. Detroit alone organized and gave moral support to a responsible citizens' committee charged with conserving American law in connection with the victims of those raids.

For decently recognizing and fairly considering the recommendations of that committee, officially as Assistant Secretary of Labor, I was made a target for much abuse shot out from the Department of Justice to the public. Even from high

places in that Department it was falsely as well as loosely if not maliciously asserted that I had organized a committee of my friends in Detroit to decide cases for me. The truth was that public-spirited citizens of Detroit, irritated by the lawless raiding there and outraged by the consequent fact that more than 100 aliens were in close custody awaiting deportations that could not be made, their families suffering meanwhile from lack of support, organized on their own initiative a local committee to relieve the situation in the interest of the good citizenship of Detroit.

That committee consisted of Frederick F. Ingram, a manufacturing chemist and an old resident, a prominent citizen of the State as well as the city, as chairman; S. S. Kresge, the head of a large chain of five and ten cent stores; F. E. Brown, an ice dealer at the head of The Public Necessities Corporation; F. E. Steelwagen, a conservative lawyer; Fred M. Butzel, also a conservative lawyer; and the late Charles D. Williams, Bishop of the Protestant Episcopal Diocese of Eastern Michigan.

The service which this committee undertook in behalf of the law-abiding elements of the city of Detroit was to ascertain the treatment and the culpability of the prisoners captured in the Detroit raids and still in custody, and to inform the Department of Labor at Washington of the facts and of its judgment regarding them. The Department of Labor did not create, select nor organize that committee. Only two of its members were known to me—Mr. Ingram and Bishop Williams. Nor did

the Department assume to invest the committee with any authority. The Secretary's authority could no more be delegated to a civic committee than to a Commissioner General of Immigration or a group of "under-cover" detectives. But upon being informed by its chairman of the purposes of the committee and the local standing and responsibility of its members, the Department did welcome its assistance in relieving Detroit of the scandalous situation which the Department of Justice had produced but for which the Department of Labor was legally responsible.

The problem was baffling. Owing to the raiding and to the lack of communication with Russia, the Department of Labor was compelled to detain in custody, indefinitely, large numbers of aliens who had been convicted of no crime yet had been administratively ordered to be deported as undesirable residents and who were unable to give bonds to assure their appearance when deportation to their own country could be effected. The only recourse of the Department was to keep them in prison or to parole them. The embarrassment was increased by the fact that in all probability many of these prisoners were in reality not undesirable residents even within the proscriptions of a drastic law. Bald perjury at some of the hearings was reasonably suspected. Under those circumstances the public spirit of the Detroit committee was a welcome manifestation. Consequently I gave it access to the imprisoned deportees at Detroit and to the appropriate records, notifying its chairman

that its recommendations in individual cases would be gratefully received and fairly considered.

Accordingly the committee made a thorough and conscientious investigation of the Detroit cases, and as Assistant Secretary of Labor I acted favorably upon its recommendations as far as the law allowed. In cases in which deportation was finally found to be necessary under the law for technical resons only, and the committee was willing to accept moral responsibility for paroles pending resumption of communication with Russia, I allowed the paroles. The reasonableness of this course may be inferred from the impression which his work in the committee made upon Bishop Williams.

In the course of a sermon at the Cathedral of St. John the Divine in New York City about a year afterwards, he said, as reported by the New York Globe of April 11, 1921: "Business men are seeing 'red.' They commenced seeing 'red' with their drive on radicalism. They branded every one who had a progressive thought as a 'parlor bolshevist,' and persons have been secretly arrested by paid spies on manufactured information and often deported without cause. I investigated several of these cases in Detroit, and found persons supposed to be dangerous radicals to be but simple, ignorant foreigners, unaware of what was being done to them. It is the foulest page in American history. The very principles of Americanism have been undermined by this hysteria and panic."

Another member of that Detroit committee tes-

tified before a subcommittee of the Senate to the American spirit that prevailed in Detroit both before and after the raiding, and which sustained the Detroit committee in its patriotic task. This member was Fred M. Butzel, who told that Senate subcommittee that the people and the local authorities of Detroit were proud of their course with reference to "radical" meetings there and the treatment of "radicals" at their meetings. "We gave the radicals," he testified, "full and free permission to shoot off their mouths as much as they pleased, and to hold as many meetings as they pleased, so long as they interfered with nobody else."

Before the formation of the citizens' committee, the City Council had requested the Mayor to demand of the Federal authorities immediate removal of the 128 prisoners in the "bull pen" of the Municipal Court building, and toward the middle of January the Immigration Commissioner at Detroit, Percy L. Prentis, succeeded in having them transferred to Fort Wayne barracks. This was after they had been a week in the top floor corridor of the Federal Building and possibly a little more than a week in other places.

Fort Wayne thenceforth became the place of detention for 181 prisoners in addition to the 128—a total of 309. The remainder of the 1,000 arrested had been either discharged or admitted to bail. Hundreds had been discharged because found to be citizens of the United States, the others because

they were not proved to be members of the Communist Party, the only accusation against them.

So unique was the attitude of Detroit during the period of this story that the testimony of Chairman Ingram of the citizens' committee of which Bishop Williams and Mr. Butzel were members, may with advantage be quoted from liberally. Describing the sane behavior of the local authorities and the sane sentiment of influential local people at a time when the deportations delirium was making headway everywhere else, Mr. Ingram confirmed the testimony of Mr. Butzel, quoted from above, by saying that Detroit had a policy of "not destroying the so-called radical meetings or permitting the radicals to disturb the conservative meetings." While "seditious utterances and inflammatory utterances were prohibited" the agitators "were given plenty of leeway to talk"—the effect of their talking being offset by counter meetings. "During the War anything that would discourage the progress of the Federal government in any way was considered" as seditious and was prohibited; and advocacy of the overthrow of the Government by force or violence "was banned completely. People who made those utterances were not permitted to talk, but we got away with that without any disturbances. They could talk about radicalism, injustice, and all that." And Detroit had no trouble apart from the attempt to interrupt a Breshkovsky meeting with outcries. This disturbance was easily quieted, and the meeting went on. Nor were there any labor troubles. "Then

came the raids," Mr. Ingram continued, "and in the raids there were citizens as well as aliens taken and imprisoned, and it caused a tremendous amount of fermentation among those young men, both aliens and Americans."

Over 1,000 arrests were made in the raids, according to this well-informed witness, who corroborated other witnesses in that particular, and who went on to state that only 595 warrants of arrest were issued, and that the number of prisoners turned over to the Department of Labor was only 527—less by 68 than the number of warrants issued, and less by about 473 than the number of arrests.

One of the persons arrested, a law-abiding citizen, an educated man, a skilled mechanic working for Mr. Ford at the time but afterwards in business for himself, "was attending a lecture, not a forbidden lecture by any means," to continue quoting Mr. Ingram's testimony before the Senate subcommittee, when "the hall was surrounded and every one in the hall was taken and imprisoned—amongst them himself." His wife did not find him until daylight the next morning. "She was permitted to talk to him through the bars," and he, being a citizen, was then promptly released. The place in which he had been arrested was a public hall where an audience had assembled to listen to a public address. It was raided for the purpose of arresting aliens supposed to be members of the Communist Labor Party.

Another man about whom Mr. Ingram testified

"was taken out of his apartment house, his suite of rooms, between 2 and 3 o'clock in the morning," without a warrant, and hustled to jail, where he was released about 9 o'clock in the morning upon the fact appearing that he was a citizen. He was "a good citizen," Mr. Ingram testified, "without any suspicion against him," living "in one of the best parts of the city—as inoffensive a man as anybody could be."

The lawlessness and the cruelty of the January raiding in Detroit differed only in magnitude and unimportant detail from the simultaneous raiding of the "red" crusade in every part of our country in which the detectives of the Department of Justice gave full play on that January night to their deceptive purposes and their repugnant European methods. From Detroit westward and southward to the Mississippi and the Ohio, and eastward through Pennsylvania and New York into Philadelphia, New Jersey, New York City and New England, that "red" crusade was conducted with so little respect for law and order as to discredit the patriotic boast that ours is "a government of law and not of men." The popular approval it received at the time lies beyond the range of any reasonable explanation other than that the public mind was under the influence of what must always be regarded as a monstrous social delirium. Such deliriums cannot continue even in milder forms, nor often recur, without disastrous social consequences.

CHAPTER XV

THE ASSISTANT SECRETARY OF LABOR TAKES CHARGE.

Two months almost to a day after the January raids, the Solicitor for the Department of Labor, John W. Abercrombie, gave me formal notice of his intention to absent himself from the Department within twenty-four hours for an extended leave. This decision of his brought me immediately into responsible official connection with the results of the raids.

Until then the Solicitor had been for considerably more than a year in Departmental charge of Immigration subjects. The work was extremely disturbing to him in consequence especially of complications in the Bureau of Immigration, and several times he had assured me of his wish to resign, but I urged him to wait. Circumstances solved Mr. Abercrombie's problem for him. He told me informally on the 1st of March that in consequence of the death a few hours before of the Senator from his State, Alabama, he was contemplating a campaign for the vacant seat in the Senate pursuant to a promise he had made his people at the close of a former statewide candidacy of his; and on the 5th he waited upon me officially, accompanied by the Commissioner General of Immigration, and, explaining that he intended to be absent

for an indefinite time, formally turned all immigration responsibilities over to me.

As Secretary Wilson was at this time absent from the Department, remaining away for several weeks on account of family illnesses and a tedious illness of his own which necessitated his avoidance of any but Cabinet duties when well enough to work at all, I was during that entire period of approximately two months, Secretary of Labor by operation of law for all administrative functioning; and as the Solicitor did not return until after the Secretary's return, I was all the time without an official substitute for any purpose. I had often administered the immigration duties of the Department, and had thus far in the course of the "red" crusade been required from time to time to relieve the Solicitor during his brief absences, but now I was plunged into responsibility for the aftermath of this crusade to the full.

A conscientious performance of the duties of the office with reference to that crusade, and in the spirit of the foundation principles of the American Declaration of Independence and in harmony with the American Constitution and the concordant policies of Secretary Wilson as head of the Department of Labor, soon involved me in a hurricane of Congressional politics and newspaper vituperation. With that rough and tumble experience, my story must in due course deal. For the present, however, it is chiefly concerned with the complex official responsibilities I faced when the Solicitor relinquished administration of the immigration laws.

CHAPTER XVI

COMMUNIST PARTY MEMBERS

When I took charge of the immigration service the cases of thousands of aliens who had been arrested by the Department of Justice on Department of Labor warrants were pending, and nearly all turned upon questions of membership in the Communist Party of America.

Secretary Wilson had, as I have already explained, authorized warrants of arrest for membership in that organization, and subsequent to the arrests he formally decided the essential membership question after hearing the Department of Justice and the Communist Party in a joint discussion before him. Immediately after the close of the arguments he called the Solicitor and myself into conference over the decision to be rendered. We were all agreed in opinion that upon the case presented he must order deportation. Incidentally I urged that he make it clear on the record that he was deciding only a question of law, so that the courts would be under the necessity in *habeas corpus* cases of passing upon the lawfulness of the Communist Party with reference to alien membership. Mr. Wilson needed no urging. It was his own desire that any court decisions in the matter should determine judicially, as he in the first instance must determine administratively, whether or not the

Communist Party had brought itself within the proscription of the alien deportation laws. So he decided explicitly, upon the conceded fact of the alien's membership in the Communist Party, that he was therefore and for that reason alone subject to deportation.

The alien in whose case Secretary Wilson made that decision bore the name of Engelbert Preis. The decision was made nearly six weeks before the Solicitor's departure placed upon me the duty of deciding the merits of each individual case in the accumulated mass of cases depending upon membership in the Communist Party. Preis admitted freely that he was an intentional member. So the issue was simple. If the Communist Party belonged to the class of organizations that Congress had prosecribed, then Preis, being an alien and having become a member of that organization under circumstances which charged him with knowledge of its organic declaration, was by the law subject mandatorily to deportation. And that the Communist Party did belong to the proscribed class of organizations was evident from its declaration of a purpose to conquer and destroy the government of the United States, not by parliamentary processes, but by direct conflict with our governmental machinery in open combat.

It was several months later, and after the duty of administering the "red" deportation laws had fallen upon me, that the question upon which the Preis case turned came, on writs of *habeas corpus,* before the Federal court at Boston, Circuit Judge

Anderson sitting. This court decided, June 23, 1920, that the deportation laws did not give the Secretary of Labor jurisdiction to deport aliens for mere membership in the Communist Party. It was afterwards overruled by the next highest court, but the question has never gone to the Supreme Court of the United States. Before Judge Anderson's decision, Judge Westenhaver, a Federal Judge at Cleveland, had sustained Secretary Wilson's view; and about four months later, Judge Knox of the Federal Court at New York City disagreed with Judge Anderson and sustained the judgment of Secretary Wilson.

To decide Communist Party cases, in accordance of course with the principle of Secretary Wilson's decision in the Preis case, became part of my duty when, on the 6th of March, 1920, I took charge of the immigration work of the Department of Labor. Since I regarded that decision as a correct application of the law, it was not to me a burdensome precedent. I did, however, find myself burdened in my efforts to determine whether each individual alien charged with being a member of the Communist Party was so in fact. If the evidence showed him to be a member, it was my official duty to order his deportation; if the evidence did not show him to be a member, it was just as much my official duty to cancel the warrant of arrest under which he was in custody or bailed—that is, to release him as an alien resident whose rights of residence had not been forfeited. This duty might have been much less burdensome if I had been

willing to disregard the evidence, but I felt bound by my obligations of citizenship and by my oath of office to decide each case according to the evidence and in harmony with the law of the land.

CHAPTER XVII

COMMUNIST LABOR PARTY MEMBERS

Besides alleged members of the Communist Party whose cases were before me in large numbers for decision, there were also before me in like manner numerous cases of aliens alleged to be members of the Communist Labor Party.

Though their names were very much alike, these two party organizations were separate bodies, with distinctively different platforms. As already explained in these pages, both were offshoots from the Socialist Party. The left wing of this party of many election contests from 1887 on, had met in convention at Chicago early in September, 1919, and had there organized the Communist Party and promulgated its platform; whereupon another faction of the Socialist Party, one which had held middle ground between the left wing and the right wing, and which had participated in the convention that organized the Communist Party, repudiated the Communist Party platform and promulgating a distinctive platform, formed a third organization which they named the Communist Labor Party.

Against alien members of this third organization, as well as those of the second from which it had seceded, warrants of arrest were applied for

by the detective auxiliary of the Department of Justice. Consequently members of the Communist Labor Party to the number of about 300 were arrested and their deportation demanded.

When some of those cases were before me for decision, I concluded that the platform of the Communist Labor Party did not bring that party within the proscribed class in which Secretary Wilson had included the Communist Party. But as warrants of arrest had been issued under the general arrangements that preceded my taking charge of immigration matters, I was of opinion that this essential question should be decided by the Secretary in person. So, pending his action, I postponed decisions in all Communist Labor Party cases.

Meanwhile, as the arrested aliens of this class who were financially able to give bail had done so, and as the absence of the Secretary would subject the others to indefinite imprisonment unless they were released during the interval, I directed that pending his decision the imprisoned ones be liberated "on their own recognizance"—that is, on their respective promises, financially unsecured, to appear if and when called upon to do so. From this action of mine the Commissioner General of Immigration took the precaution of appealing to the Secretary, and I transmitted his appeal; but because I refused to continue the imprisonment of these probably undeportable aliens until the appeal could be heard and had been decided, he formally withdrew it.

Consequent upon my reference to the Secretary

for decision of the question of deportability for mere membership in the Communist Labor Party, he directed a joint hearing in one of the cases which squarely presented the issue—the case of Carl Miller. This hearing did not come on for several weeks, owing to the Secretary's unavoidable absence. It was discussed at length on the 24th of April, 1920, counsel for the alien and representatives of the Department of Justice contesting the point at issue.

At the close of the hearing, at which I sat with Secretary Wilson, as did also the Solicitor and the Commissioner General of Immigration, Mr. Wilson called me into consultation, asking for my impressions of the case. Replying that it might be better if I did not confer with him until he had gone over its merits in his own mind, since I might be too much prejudiced by my previously formed opinion to be a satisfactory initial conferee, I limited my advice to the suggestion that the Communist Labor Party case hinged upon the question of whether or not the organic law of the organization contemplated violence. About a week later the Secretary called me into consultation on the subject again. On this occasion he told me that after carefully reviewing the case in every detail he had come to the conclusion that the Communist Labor Party was not a proscribed organization under the deportation laws.

In his written opinion he explained that as the only question presented by the record was whether the Communist Labor Party came within the pur-

view of the Act of Congress so as to make aliens who were merely members of it liable to deportation, its membership application card and pledge were the first objects of scrutiny. Examining these, he found no intimation that applicants were required to accept the tactics of the Communist International or of the Communist Labor Party itself except in so far as they were expressed in the constitution, the platform or the program of the party. Turning then to those documents and quoting their declarations, he concluded that while they indicated an "extreme radical objective," there was nothing in them disclosing an intention to attain the objective by force or violence or any other means incompatible with the use of parliamentary machinery. Mr. Wilson closed his memorandum of decision with the truly American sentiment that "if the American people are left free to discuss and decide the questions presenting themselves for consideration from day to day, uninfluenced by the threat of force or violence, they can be relied upon to protect themselves against any false philosophies, wild-eyed revolutions, or dictatorships of any kind."

CHAPTER XVIII

A CLUTTER OF "RED" RECORDS

The most perplexing of all my problems in connection with the "red" crusade was the cluttered condition of the "red" records in the Bureau of Immigration, that ministerial agency which the Department of Labor had to use in the administration of all its alien exclusion and expulsion functions.

Upon plunging into this clutter, which had embarrassed the Solicitor to the verge of resigning, I was amazed at the facts disclosed. The whole "red" crusade stood revealed as a stupendous and cruel fake. Had the facts as they were then thrust upon my attention been generally known, public condemnation of the Department of Justice and its co-operating agencies would have been sure and swift.

Warrants of arrest to the number of 5,000 or thereabouts were outstanding. They had been issued in routine by the Solicitor after clerical preparation in and reckless recommendations by the immigration bureau, and arrests had been made under more than half of them. Following the arrests, there had been hearings before examining inspectors of immigration at various immigration stations throughout the country, and reports of the hearings had been forwarded more or less promptly

to the Bureau of Immigration at Washington. But the reports had "stuck" in the Bureau.

For weeks upon weeks they accumulated, awaiting transmission to the Office of the Secretary for decisions. Very few had been brought to the attention of the Solicitor before his departure. Transmissions to me after he had gone were dilatory. There was little prospect when I took charge that many would reach me short of a distant future. Meanwhile the arrested aliens—all except those who had been able to give the bail exacted—were in close confinement, closer and less humane in some instances than if they had been serving prison sentences for crimes. And agents of the Department of Justice, contemptuous of the exclusive authority of the Department of Labor and using the machinery of the Bureau of Immigration pretty much at their own will and for their own ends, were dealing dictatorially with the whole subject as if all authority had through some subterranean channel been passed along to them.

A revolting instance which came to my attention on the day I took charge, illustrates more than one aspect of these disorderly conditions. An alien against whom no evidence of any culpability appeared in the record had been arrested by Department of Justice agents in one of the January raids. He was imprisoned ten days without a warrant of arrest. For nearly a week longer he was in prison under a warrant of arrest before he was given the hearing the law required. After the hearing, which dragged on for a week without developing any evi-

dence of culpability, his imprisonment was continued five weeks further while the worthless record of hearing awaited transmission to Washington. When after all this delay the record did reach Washington, the Bureau of Immigration, noting the utter absence of inculpating proof, recommended that the Department of Labor withhold its decision indefinitely for the purpose of affording opportunity for the Department of Justice to hunt for proof. That the bureau also recommended release of the prisoner during this indefinite postponement is true, but upon his own recognizance, a condition which would not only have required him to report periodically to the immigration authorities, but would have kept him under a cloud of suspicion in his community while the detectives were hunting for the proof without which their arrest of him in the first place was defiant of law. Such trifling with personal liberty seemed to me inexcusable, and I cancelled the warrant of arrest.

Not only in that case, but with reference to the whole situation which the Department of Justice and the Bureau of Immigration had between them brought about, my official duty was plain.

At the outset I took measures for clearing up the clutter of deportation records. This was not as easy as one might infer from the absolute authority which the law gave me over the Bureau of Immigration. Bureaucratic habits made stubborn resistance. Among them was one that afforded a reason quite distinct from either inefficiency or collusion for the cluttered state of the records in the "red" cases—

a reason without which neither inefficiency nor collusion could have entered in. It lay in the lap of an old practice which the Department of Labor inherited when it inherited the Bureau of Immigration from the Department of Commerce and Labor. I had long regarded the practice as both obstructive and unwarranted by law. So had Secretary Wilson. But there had been no opportunity to abolish it without making matters worse. Deeply rooted in the habits of the immigration service, it could not be blown away on the breath of any magical "presto change."

Pursuing that practice the Bureau of Immigration made primary decisions in both exclusion and expulsion cases, leaving to the Secretary of Labor or his representative the function of formally approving them. Until recently these decisions had been in the form of recommendations. They were set out in each case in an official memorandum which summarized the facts from the record of hearing, drew conclusions from the facts so summarized, and made recommendations to the Secretary of Labor or his representative, who was expected to turn each recommendation into a decision by "signing on the dotted line" below the word "approved."

This extra-legal practice would not have been half bad if the recommendations thus prepared for the Secretary's approval could have been depended upon as genuinely those of the efficient subordinates in the bureau who examined the records of hearings and summarized the facts; but very often, much oftener perhaps than was known in the Office of the

Secretary, the recommendations were written under arbitrary orders. In the actual circumstances, the Secretary of Labor was in these cases assigned by the Bureau to the role to which an experienced Departmental messenger once upon a time assigned a new Secretary of the Treasury who hesitated to place his signature upon a document before him, muttering to himself, "Let me think; let me think." "Mr. Secretary," said the messenger, "you don't have to think; all you got to do is to sign you' name right there on that line."

As the "red" cases began passing through the Bureau, the Bureau memorandums were altered so as not only to assume powers of primary decision as in the past, but explicitly to assert such powers. This innovation gave to the memorandums of the Bureau of Immigration the specific character of primary decisions. Although the assumption of adjudicating power had no recognition in the law, it was one more step in the creation of a Bureau habit of posing as primary authority ("the trial court," as the Attorney General approvingly characterized it afterwards) which the Secretary of Labor in the role of the "appellate court"—to quote the Attorney General again—might overrule, but at the peril of ignorant criticism for interfering with a rigid administration of the immigration laws.

This practice alone may have accounted for the clutter of "red" records I found in the Bureau of Immigration when I took charge of Departmental activities in connection with our immigration laws. For the work of making, reviewing, considering and

signing those comprehensive memorandums was of course very great. The Commissioner General of Immigration did so account for it. He explained that it was impossible for him to dispose of the records more expeditiously if he gave the requisite care to making decisions. Had there been any shadow of legal authority for his making decisions, that explanation would have been impressive; but apart from the Bureau habit, there was not even an excuse for it.

This habit, however, had continued in immigration cases until the Bureau of Immigration came to regard its chief, and he to regard himself, as a species of immigration court of original jurisdiction. What is more remarkable, there were those among the temporary legal advisers of the Department of Justice in its "red" crusade who also thought of the Commissioner General of Immigration as a court of first instance, or as a "trial court," as the Attorney General characterized it; so did some of the members of the immigration committee of the lower house of Congress. According to them, the Secretary of Labor—and therefore his official representatives, the Assistant Secretary and the Solicitor when acting for the Secretary—was a rubber-stamp wielder, who, while he might by arbitrary administrative power overrule the Commissioner General of Immigration, had no legitimate function with reference to the latter's "decisions" in deportation cases other than the mechanical one of approving them without thought by signing his name "right there on that line."

Knowing that the then prevailing procedure with reference to deportation cases had no legal excuse for resting upon Bureau "decisions" or recommendations—and therefore that the delays in transmitting expulsion records (delays that were ascribed by the Commissioner General to his inability to give the records the attention necessary for passing judgment upon them any more rapidly than he was doing) were indefensible, I decided to put an end to this procedure, and I did. In consequence the accumulation of records had been greatly reduced by April 6, and by the 9th it was negligible. On the 3d of June the remnants of the accumulation, a scattered few of the delayed records which had been overlooked in the general clean-up, were disposed of. On the last of those dates the warrant-case work at Washington, which had been virtually current for several weeks, became literally so.

In this harassing clear-up work I had the assistance, fortunately, of a loyal, vigilant, acute, able and conscientious official private secretary, Hugh Reid, a man with that "saving sense of humor" which leads through wit to wisdom. He was aided by my official confidential clerk, Lillian Conrad, whose natural abilities, together with her industry and a training for high grade secretarial work, qualified her especially for helping in the emergency which our office faced. Nor can I forget the thoughtful service of my official messenger, Carlos R. Blackwell, a man of exceptional competency, shrewdness, honesty and devotion to duty. With their co-operation I was able to stimulate the transmission of

immigration files until the accumulated cases, together with the inflow of new cases, had been decided one by one in accordance with my judgment of the evidence and of the law applicable to each.

While the work of clearing up the clutter of records went on, the work of making decisions on the merits of the cases went on with it. I decided more than 1,600 cases before the middle of April, a task which no one could have accomplished without the efficient help I had from my messenger, my confidential clerk and my private secretary. Some days the number of cases to decide ran so high in the scores that they touched the five-score mark. How so huge and exacting a task was performed in so short a time and with so little error that only a few cases have been criticized by even the least tolerant of critics and after meticulous scrutiny, is a story by itself.

CHAPTER XIX

DECISIONS IN THE "RED" CASES

In any account of the decisions I made in "red" cases after taking Departmental charge of the immigration service in behalf of the Secretary of Labor, it would be impossible to enter into detail without a tedious survey of immigration files running into thousands. Nor could minute detail be of much if any value. In so far as statistics may be important, round figures tell the story minutely enough; and as to the facts involved in individual cases, nothing more is required for a just understanding of the whole experience than a fair explanation of such cases as were either distinctive or typical.

Statistics purporting to be exact with reference to all proceedings against aliens under the "anarchistic provisions of the immigration law" for the period from July 1, 1919, to January 1, 1921, were formulated early in 1921 by the Bureau of Immigration. According to this statement 6,328 warrants of arrest were issued, and of those 2,919 were cancelled and 1,119 were sustained and deportations under them ordered. That period began, however, several months before the responsibility for decisions fell upon me and continued several months after the deportations delirium had begun to subside.

But the annual report of the Commissioner General of Immigration for the fiscal year from July,

1919, to June, 1920, inclusive, gives data for an intermediate period that coincides pretty closely with the period when I was in charge of warrant-case work. It begins two months earlier and ends when most of the "red" cases had been disposed of. According to this report the number of warrants of arrest issued for "reds" from December 29, 1919, to June 30, 1920, was "in the neighborhood" of 5,000, and the number of these that were executed by the making of arrests was "approximately" 3,000, the arrests being followed by hearings which resulted in deportation orders to the number of 556, and in cancellations of warrants of arrest to the number of 2,202.

Using that report as a guide, with due allowance for the confusion of records in the Bureau and for variations in the period of time covered, and taking my own impressions and rough notations into account, I should think it a probable estimate that somewhat within 6,000 warrants of arrest were issued for alien "reds" by the Department of Labor at the instance of Department of Justice detectives; that somewhat within 4,000 arrests were made, the remainder of those warrants being "thrown into the discard" by the detectives; that about 3,000 were cancelled after hearings, nearly if not quite all by myself; and that out of less than 1,000 deportations ordered after hearings, more than 500 were ordered by me.

Further statistical light may be shed upon the circumstances by reference to the number and character of the decisions I made in this class of cases

during the first month or so of my activities in connection with the "red" crusade—from March 6 to April 10, 1920. In that period I made about 1,600 decisions, nearly all on charges of membership in the Communist Party; and of those decisions, about 1,140 ordered cancellation of warrants and about 460 ordered deportation.

My deportation decisions were made because, in my judgment, the evidence in the record proved, with more or less certainty, that in those cases the aliens were within some clause or other of the immigration statutes which demanded deportation. In an overwhelming majority of those cases the necessity for deportation was established only by proof of membership in the Communist Party of America.

My cancellation decisions were made because, in my judgment, there was in the records before me no lawful proof to sustain the charges in the warrants of arrest under any provision of the immigration statutes. Of the total of about 3,000 cancelled warrants, it should be explained incidentally that about 300 had been issued on the ground of membership in the Communist Labor Party, and that these were cancelled as matter of course after the Secretary's decision that the Communist Labor Party, unlike the Communist Party, was outside the proscription of the immigration laws.

That my judgment was right in every decision, I could not and would not contend. No government official charged with responsibility for deciding questions of law and fact involving personal rights and the principles of our Government could with any

grace insist that every one of nearly 4,000 decisions he had made was a correct decision. The most he could insist upon would be that each decision was right in his own judgment when he made it. Upon this I do insist.

And in all those cases no substantially erroneous decision has yet been specified, except by Judge Anderson of Boston when he decided that mere membership in the Communist Party of America was not a lawful cause for deporting aliens. On this point Judge Anderson's decision was reversed by the appellate court of his Circuit (rather perfunctorily, I am bound to concede), but neither his decision nor its reversal affects any of my cancellation decisions. I had followed the judgment of the Secretary of Labor, as I should have been in duty bound to do even if had disagreed with him, that the Communist Party was a proscribed organization; whereas Judge Anderson decided that the Communist Party was not proscribed. I may therefore repeat that of all the "red" cases I decided, no substantially erroneous decision of mine has yet been specified. Most certainly and without qualification may this be said of my cancellation decisions, and it was for these alone that my official fidelity was clamorously questioned.

Had I been governed in those cancellation decisions by no better motive for making them with extreme caution and the utmost accuracy at my command, my knowledge of the fact that detectives for the Department of Justice, law clerks in the Department of Justice, and politically alert members of

Congress inspired by special interests, together with coadjutors in the Department of Labor itself, were vigilantly scrutinizing every case in which my decisions were favorable to accused aliens, would have been enough to restrain me from unfaithful wandering. Nobody in my place with even a minimum of discretion would have challenged such a combination by consciously making assailable decisions. Regardless, however, of any or all of my motives for trying to make unassailable decisions—and I modestly confess to better motives than fear—every attempt to show even one erroneous cancellation decision has utterly failed.

As to one of those decisions, there might be honest, though certainly not intelligent, criticism. It was made in the case of the late Enrique Flores Magon, a Mexican who had lived in the United States for several years and was the father of resident American-born children.

Had I ordered him to be deported to the country whence he came, he would have been promptly shot for Mexican political offenses by the military authorities then in control of Mexico. No American-minded official who cherishes one of the noblest of his country's traditions, that it is an asylum for the oppressed of all nations, could lightly deport an alien to such a fate even in a period of delirium. Yet Magon would have been subject mandatorily to deportation if at his hearing he had withheld explanations after calling himself an "anarchist."

Replying, however, freely and fully to searching questions by the immigrant inspector who examined

him under the Labor Department's warrant of arrest, he showed himself to be the very opposite of an anarchist of any kind—whether violent or peaceable. A thorough-going believer in government, he lacked the distinctive characteristic of every type of anarchism; for anarchism means government by none, even as monarchism means government by one.[1] Although the kind of government Magon believed in might not appeal favorably to a Hamiltonian, nor for that matter to a Jeffersonian, it came nevertheless within the category of governmentalism, and therefore not of anarchism.

There being no evidence either way in Magon's case except his own statements, the only serious question before me was whether or not our deportation laws required deportation of aliens who label themselves "anarchists," though their unimpeached statements of what they believe show them to be governmentalists. As at the time I decided that question, so am I still strongly of the opinion that governmentalists could not be lawfully deported as "anarchists," no matter how they labeled themselves, unless the label was the only evidence in the record. An alien against whom there was no proof of belief in overthrowing the government of the United States or all forms of law by force, could not be lawfully deported under those laws even if his mental processes did confuse anarchism with

[1] See "Anarchism" in "What's What in the Labor Movement: A Dictionary of Labor Affairs and Labor Terminology". Compiled by Waldo R. Browne. Published at New York by B. W. Huebsch, Inc., in 1921.

governmentalism in his choice of terms. So I cancelled the warrant of arrest under which the Department of Labor held Magon in custody.

Another of my cancellation decisions that might be criticized in all good faith by the inconsiderate was made in the case of Paul Bosco, a Socialist who, early in the period of our participation in the World War, had been convicted of distributing literature which fell under the inhibition of one of our temporary War laws. For that War-time offense he was sentenced to imprisonment for ten years, a term reduced afterwards by President Wilson to two.

Part of the inconsiderate as well as the malignant criticism to which I was subjected for my administration of this case related to the fact that after the alien had been ordered deported by the Solicitor as Acting Secretary before immigration matters came under my charge, and had been sent to New Orleans for deportation to Russia, I ordered that he be brought to New York and given a rehearing. The facts on which those criticisms rested were correct as far as they went, but they were grossly incomplete.

Bosco's first hearing on deportation charges had been given him in the Atlanta penitentiary while he was still serving sentence for his War offense. He was hundreds of miles from home, possessed of only thirty dollars, and in an unfriendly and depressing environment. Although told he might have counsel if he wished, his formal waiver of counsel in those circumstances seemed to me to have been at the best only barely voluntary. At any rate his freedom

to employ counsel was narrow enough to justify a re-hearing at which counsel provided by friends might protect him. Nor could the Government by any possibility be bothered or embarrassed by a second hearing. As to the criticism that I brought him to New York from New Orleans where the immigration bureau had taken him for deportation upon the expiration of his sentence at Atlanta, the transfer to New York had been already ordered by the Solicitor as Acting Secretary; and rightly ordered, for New York was the only port from which Bosco could be deported to the country from which he had come. The Solicitor's order for removal to New York having been suspended at the behest of the Bureau of Immigration, I terminated the suspension because, whatever its purpose, the only effect of its continuance would have been an indefinite, cruel and useless imprisonment of Bosco hundreds of miles away from his friends.

But the important consideration regarding the Bosco case was my decision on its merits after the re-hearing at which Bosco was represented by Harry Weinberger, Esq., of the New York bar. For deportation purposes the only accusation against Mr. Weinberger's client related to a verbal outburst of emotion of which he was guilty immediately after the sentence for his War-time offense had been pronounced. Angered by the imposition of a prison term of ten years for distributing what he had supposed to be lawful circulars, he exclaimed: "When I come out of prison, I hope to see the red flag flying above the stars and stripes." This exclamation marked

the alien as a "red," but there was nothing in the record to show a hostile purpose or opinion, and much to show that there was no other impulse for his exclamation than anger. His verbal outburst, the only evidence against him in the deportation proceedings, was no better proof of belief in overthrowing our Government by force and violence, the only ground on which he could have been deported lawfully, than angry profanity is proof of atheism. As most men's swearing is as meaningless as some men's praying, so this man's "treasonable" exclamation was as meaningless as some men's patriotic eloquence.

Concluding that Bosco was not subject to deportation on any facts disclosed by the record in his case, I decided to cancel the warrant for his arrest. This decision has been criticized by some persons who, though they reason and reflect, have not seen the record of the case and are not familiar with the deportation laws. It has been denounced by persons less disposed or qualified to reflect reasonably than to censure hysterically or to stigmatize maliciously. But I have yet to be apprised by anyone or in any way of anything in the law or the evidence affecting that case which would have warranted a contrary decision. There have, indeed, been appeals to those mushy "general principles" with which apologists for lynching flippantly defend the lawless mobs they sympathize with. But "general principles" of this savage sort, while convenient enough for excusing mob outrages to the mob-minded, afford no basis

for administrative decisions by sworn officers of a government by law and not by lynchers.

A few more of my cancellation decisions in the "red" cases would possibly offer to thoughtful criticism almost as firm a footing as those in the Magon and the Bosco cases. Among them might be counted cases in which I decided that aliens who had renounced beliefs and withdrawn from memberships that would have subjected them to deportation were not deportable under laws enacted after their renunciation and withdrawal. But I am confident that none of my hundreds upon hundreds of cancellations offers any better grounds for criticism than the Magon and the Bosco decisions do. This seems, too, to have been the impression of my most industrious and even of my most malignant critics; for the few other cases cited in support of their criticisms were weaker than these.

Of all my decisions in the "red" cases, the vast majority—a proportion so large as to warrant the statement that there were hardly any others—were in cases involving nothing but membership in the Communist Party of America. There were also about 300 decisions in cases involving nothing but membership in the Communist Labor Party; but I pass the latter by, because the warrants for membership in this organization were cancelled by the Secretary of Labor himself, through his final and unassailable decision that an alien's membership in the Communist Labor Party did not subject him to deportation. Confining, then, my present explanations to decisions on questions of membership in

the Communist Party of America, I recall many in which I had to order deportations of aliens whom not even a lynching mob with the least remnant of righteous spirit would have deported from a frontier town.

In those cases also I acted as a responsible, and to the extent of my moral sense as a conscientious, official for a Government of law. The Congressional statutes required me to order deportations in certain specified classes of cases, and I did so regardless either of personal sympathy for the alien or his family or of private judgment of what the law ought to have been. Being in my official capacity a law administrator, not a law maker, I could, in civic conscience and with due regard for my oath of office, no more yield to the importunities of kindly Americans in such cases, than in cases of the opposite type I could yield to the denunciations of embittered provincial politicians or embittering publicity agencies. Two or three of my decisions in cases of harmless yet technically culpable victims of the "red" drive will sufficiently illustrate.

An attorney having made the objection in behalf of two clients that mere membership in the Communist Party was not sufficient ground for deportation, I filed a memorandum in explanation of my decision to deport, in which I wrote: "Alien's attorney is in error in supposing that mere membership in the Communist Party is not sufficient ground for deportation. On the contrary, mere membership is a mandatory reason for deportation. Neither activity in the organization nor actual

knowledge of the constitution of the organization is necessary to make deportation mandatory if the alien is knowingly a member. Members are presumed to know the organic laws of the organizations they belong to. In each of these two cases the alien was knowingly a member of the Communist Party."

Another phase of the same question was presented in the case of an alien whose deportation I ordered, explaining my decision in the following memorandum: "Upon being asked at his regular examination before the immigrant inspector when he had joined the Communist Party of America, the alien replied, October 28, 1919. Inasmuch as the unlawful Communist Party was formed in September, 1919, the date of joining indicates a purpose to become a member of the unlawful organization. The case is in a different category from those in which members of the lawful Socialist Party were transferred in groups, unconfirmed by any individual action. In the latter cases the alien would be what in several of the files is described as 'automatically' a member of the unlawful organization. Mere automatic membership is not within the purview of the Act of October 16, 1918. It is purely technical, and the alien ought not to be deported for it without evidence of his own assent. The same principle applies in the other direction. If conscious application by an individual has been made for membership in the proscribed organization, and the membership is complete substantially, he is deportable even though all technicalities have not been complied with. In such a case the alien is affiliated

with, even if he has not yet technically become a member of, the organization."

Cases like those presented no peculiar difficulty. The fact of conscious membership in the proscribed organization had been proved, and under the law innocency of purpose personally was irrelevant. But in the great majority of cases I had to decide, actual membership was unproved; or else the member's consciousness of being a member was disproved. There were, for instance, a large number of what the Department of Justice detectives called "automatic members," a term that needs explanation.

After the Communist Party was organized at Chicago in September, 1919, many local branches of the Socialist Party, from which the Communist Party had seceded, voted to transfer their allegiance from the Socialist Party to the Communist Party. Sometimes the vote of those present was nearly if not quite unanimous; sometimes there was only a majority vote of the members attending the meeting at which the vote was taken; but never was the action indicative of acquiescence by any members but those voting in the affirmative. Often individual members of the lawful Socialist Party were thus transferred to the unlawful Communist Party without the slightest knowledge on their part that the transfer had been made. Many continued paying dues to their respective branches of the lawful Socialist Party, as they supposed, but—owing to their technical transfer—actually into the treasury of the Communist Party. Socialists thus auto-

matically transferred from a lawful to an unlawful organization were denounced by the detective auxiliary of the Department of Justice as "automatic members" of the unlawful Communist Party, and, regardless of their knowledge or understanding of the Communist Party, and even of their antipathy to it, their deportation was demanded if they were aliens.

To illustrate my official experience with this phase of the "red" crusade, I quote two of my memoranda of decision, one for cancellation of the warrant of arrest, the other for the alien's deportation.

In the cancellation case I officially explained my decision in favor of the alien in these terms: "It is essential to membership in the Communist Party that applicants for such membership shall sign an application card in which they state that they have 'read the constitution and program of the Communist Party,' that they declare their 'adherence to the principles and tactics of the Party and the Communist International,' and that they 'agree to submit to the discipline of the Party as stated in its constitution,' pledging themselves 'to engage actively in its work.' This document is quoted in such manner by the Secretary of Labor in his Communist Party decision (Preis case, January 24, 1920) as to indicate that the alien's signature to the same is to be regarded as important with reference to the fact of membership. The fair inference is that in his decision the Secretary did not intend to include transmitted membership, unconfirmed by

individual assent, as being within the scope of the Act of Congress of 1918. Of course, it is not necessary to prove the signing of the aforesaid application card by actually producing the same. Its having been signed may be inferred from proved circumstances. But when membership in the unlawful Communist Party is to be inferred from transfer of memberships in a group from the lawful Socialist Party, facts must appear which will reasonably justify an inference that the alien has signed the application which the Communist Party exacts as a condition of membership. Such an inference cannot be reasonably justified from the evidence on file in this case."

The essential difference between that case of "automatic membership" and cases of membership transfer in which I decided against the aliens by ordering deportation, is explained in the following memorandum of decision in one of the latter class of cases: "The alien appears to have gone over to the unlawful Communist Party from the lawful Socialist Party knowingly. That is to say, he appears to have known the facts which make the Communist Party an unlawful organization and those which make him a member of it. Whether or not he understood that the facts of which he had knowledge made this organization unlawful is immaterial. The question is one of the difference between error as to fact and error as to law. Violent as the presumption often is, everyone is nevertheless presumed to know the law. But knowledge of essential facts must be proved. In this case the record

shows that the alien knew the facts which make the Communist Party unlawful, and also the facts which make him a member of it."

Still another class of perplexing cases were those in which the alien, having been a technical member of the Communist Party, had withdrawn. In such cases it seemed to me that the decisive consideration was the intention in joining, coupled with the motive for withdrawing. It was explained in a memorandum filed with one of my decisions, in which I wrote: "This alien did join the Communist Party, but upon being informed later by a friend that it was 'no good' he quit the Party and tore up his membership card. His withdrawal appears to have been under circumstances indicating good faith. The question which therefore arises is whether or not, under the Act of October 16, 1918, the peculiar doctrine of 'once a member always a member' applies. By the language of the statute, if construed with wooden literalness, any alien who had once become a member of an organization such as the Department holds the Communist Party to be, would forever thereafter be subject to deportation for that reason—even if he abandoned the organization before the next day's sun had risen on his membership. Such a legislative intention is unthinkable in the absence of language in the statute so definite as to leave no room for interpretation. A member who in fact withdraws from a proscribed organization in good faith—that is, not for the purpose of serving it secretly in other ways or merely of escaping deportation upon detection, but because he hon-

estly renounces its objects or discovers the organization to be unlawful, whereas he had been deceived into supposing it to be lawful—comes no longer within the purview of the statute. In support of this interpretation, if support of an interpretation so obvious be needed, it may be observed that the proscribed membership is not criminal, a doctrine with reference to expulsions under the immigration laws which has been too well established by court decisions to admit of question. It follows that deportation is not a punishment for a past offense, as the penalties of criminal statutes are; its only purpose is to expel aliens whose societary affiliations, etc., make them obnoxious. Like a resident alien who has recovered from a contagious disease, an alien member of the Communist Party who quits it under circumstances indicating good faith cannot be deported for having theretofore brought himself within the purview of the law by joining that party."

CHAPTER XX

PRINCIPLES OF DECISION

The "red" cases were not decided upon the spur of a moment. All were put to the test of carefully prepared principles of decision. I prepared an outline of the principles to guide me, doing so early in the period during which official responsibility rested upon me for administering the immigration laws, and throughout that period those principles were strictly applied to each case.

To begin with I placed the Communist Party of America within the proscription of the supplementary Act of Congress of 1918, which made membership in organizations of its character a mandatory cause for deportation.

Accordingly I provided in the principles of decision that aliens who were proved to be members of the Communist Party consciously should be deported. As proof of membership I required, in harmony with the Secretary's decision in the Communist Party test case, that as a principle of decision there must be evidence in each case of personal signing of the application for membership which the Communist Party exacted, such signing to be supplemented by facts or circumstances indicating membership subsequent to the creation of the Party. But signing by another, if with the authority of the alleged member, was, of course, to have the same

effect as personal signing, provided authority to sign and understanding of the purpose of such authority were proved.

Another of my principles of decision was to the effect that applications for membership not confirmed by proof of acceptance were of no value as proof of membership unless membership were indicated by proof of membership behavior. And inasmuch as many applications for membership in the Communist Party had been signed before its organization, and therefore before it could have brought its members, merely as members, within the proscription of the deportation laws, I formulated in this connection the additional principle that signed applications antedating the formation of the Communist Party would not be regarded as in themselves constituting proof of membership nor of application for membership in the Communist Party, unless unlawful by their own terms or in their legitimate implications. The alien's name in a membership list was not in itself to be regarded as satisfactory proof of membership for deportation purposes. There must be facts or circumstances tending to show that it was there by his authorization.

As to "automatic membership"—transfer of members of a legitimate organization to an illegitimate one by the vote of a branch of the former transferring its whole membership—my principles of decision required that this be not considered as subjecting to deportation any alien so transferred without proof of his own activities or declarations indi-

cating knowledge of the transfer and of the illegitimate character of the organization to which his branch of the legitimate organization had voted to transfer him.

Regarding withdrawals of membership, I adopted the principle that when a member of a proscribed organization had withdrawn under circumstances establishing good faith, he was not subject to deportation for mere membership.

Two other principles were embodied in my formulation. They bore upon all varieties of deportation cases, not alone upon questions of mere membership in a proscribed organization, and had reference especially to lawless conduct by Department of Justice detectives in making arrests. One of them was to the effect that statements by the accused alien, whether oral or in writing, made while he was in custody, without opportunity fairly afforded him from the beginning to be protected in his lawful rights by counsel, and without clear warning that his statements might be used against him, would be disregarded by me in deciding his case. This principle rested specifically upon a Federal court decision in Montana, made by Judge Bourquin in a deportation case, and a United States Supreme Court decision made in connection with a criminal case. The second of those two principles was to the effect that exhibits seized upon the premises or the person of the arrested alien without lawful process, would also be disregarded. It rested upon the same court decisions as the first.

Before passing on to the last of my formulated

principles of decision, I must state certain special circumstances. Among the aliens proved to be members of the Communist Party were many whose deportation would have imposed cruelties that no consistent American could contemplate with satisfaction, and that most Americans would abhor. Nor did their cases involve criminal or otherwise intolerable conduct on their part. These victims of the cruelties incident to deportation were not bomb-throwers, nor associates of such, nor sympathizers with them. They were as a rule industrious men, of worth in the community, who were accustomed to working their passage honestly and usefully through life. It was with no improper motives that they had become members of the Communist Party. They thought of it as a social club, or as an organization offering educational facilities to adult aliens, or as a political party of the toy variety, or as a body to which their friends belonged. So they joined, and paid their dues, and performed the ordinary functions of society members, and participated in festivals and musical entertainments and amateur theatricals; or, not taking their membership seriously, they staid at home when not at their places of work. Suddenly such men found themselves hustled off in groups to jail, "third-degreed" by detectives, held incommunicado by the police, tried before immigrant officers for an offense they could not understand as an offense, and condemned to banishment from the United States—to be deported to the country whence they had long ago come, back to places once familiar but now grown strange—condemned

to separation, probably forever, from wife and from children of American birth and citizenship. I had no alternative under the law but to order their deportation if proof of membership in the Communist Party were clear, however innocent the individual might have been. But I determined that in such cases the proof of membership must be as clear as crystal before those accidental victims of a silly delirium were deported by an authorization of mine. So I added this final clause to my outline of principles of decision: "In cases in which the alien is the father of children born in the United States, and therefore Constitutionally American citizens, and who are dependent upon and receive from him parental support, every fair doubt regarding membership within the purview of the statute will be accorded."

Following that outline of principles of decision, I decided as consistently as I could, the 3,700 to 4,000 "red" cases which it became my official duty to decide, ordering about 700 aliens to be deported and cancelling (in addition to the 300 Communist Labor Party warrants that were cancelled by instructions from Secretary Wilson), about 2,700 of the warrants under which the regular hearings in the "red" cases had been held.

CHAPTER XXI

ROUTINE METHODS

The task of making decisions in these cases was so great as a whole that I could not possibly have accomplished it but for the help of Hugh Reid, the official private secretary to the Assistant Secretary of Labor. In an official association of more than two years I had found that I could rely upon Mr. Reid implicitly, both as to fidelity and as to judgment. A law student of rare legal sense combined with rarer common sense, and an organizer and administrator of exceptional skill, he had served in the Office of the Secretary with high efficiency during much of the stressful period of the World War and in circumstances that demanded extraordinary qualifications and devotion to official duty. His service during the period of the "red" deportations decisions ranked especially high.

When I had outlined the principles upon which to make those decisions, I directed Mr. Reid to examine the records of hearings and to advise me with reference to individual cases, distinguishing the doubtful ones from those regarding which there was no room for doubt. In some he advised cancellation of the warrants of arrest; in some he advised deportation of the arrested aliens; some he reported upon as demanding my personal examination. At first I scrutinized all the records per-

sonally, but finding that Mr. Reid's advice in cases he did not regard as doubtful was in harmony with the principles of decision which I had outlined, or "on all fours" with decisions I had made, I thereafter took the responsibility, without scrutinizing the records myself, of deciding in all that class of cases as he advised. Those, however, that he reported as doubtful, I scrutinized myself. This method was quite as lawful and very much more dependable than the old Bureau routine.

Besides scrutinizing the cases that Mr. Reid reported upon as doubtful, I personally examined enough more of the records to make an aggregate of perhaps a third of all. These did not come under his inspection at all. He could not examine every record any more than I could. But he examined a daily quota aggregating about two-thirds, and I the rest. By that division of labor, both of us working at night as well as in the daytime, on Sundays as well as on other days, with the assistance also of my confidential clerk, Miss Conrad, and my messenger, Mr. Blackwell, I was able --in addition to directing all the other administrative work of the Department of Labor during the absence of the Secretary and the Solicitor, in so far as it required Departmental direction—to make decisions in "red" warrant cases at the rate of from 25 to 100 a day.

This routine continued until the obstructive accumulation of records of deportation hearings in the Bureau of Immigration had been disposed of and the inflowing tide was no longer dammed up in

its passage to the Office of the Secretary of Labor. Consequently captives unable to give bail were promptly freed from imprisonment if innocent of the deportation charges against them, or ordered deported if the charges were lawfully proved.

Though the deportation orders were not in all instances executed promptly, the fault was largely due to lack of transportation to the countries whence the expelled aliens had come. Meanwhile, unless reasonable cause for exacting high bail appeared, the deportees were released temporarily on fair bail. Some were released on their own promises to appear when called for; some on the promises of responsible friends; some, as at Detroit, on the word of citizens of good character interested in relieving the aliens of hardship and the community of dishonor.

In the course of our routine work we frequently came across cases of special hardship resulting from reckless arrests or careless detentions. One such case has been already mentioned in the course of my narrative. Among the others was one in which the alien had been arrested early in January and detained in default of $2,500 bail, which was $1,500 in excess of the Secretary's requirement. Down to the latter part of February no record of hearing had reached the Office of the Secretary, and the man was then still in jail. In another case the alien had been arrested early in January. His hearing was had soon after his arrest, but as late as the last of March the record of hearing had not been transmitted to the Office of the Secretary. An

alien who had been arrested on the 7th of November, 1919, and whose hearing took place ten days later, was still in jail in the latter part of February. Another who had been taken into custody under a Department of Labor warrant soon after the 19th of January, 1920, was still in custody and no record of hearing had been received as late as the middle of March. In this case the warrant of arrest had been issued without any evidence of probable cause, and although it exacted bail in $1,000 the alien was being held in default of $2,500. The record of another case in which there was no proof of probable cause on which to base a warrant of arrest, showed an inadequate substitute for such proof in the following letter: "I am in receipt of a telegram from the Hartford, Conn., office of the Bureau of Investigation requesting warrants for the following aliens." The name of this alien was included in the list and the letter was signed by a Special Assistant to the Attorney General. Although the warrant issued upon that farcical proof of probable cause fixed the bail at $1,000, the alien was in custody for more than a month in default of bail in $5,000.

Those instances are only samples. The number of persons held in custody for long periods in default of exorbitant bail, sometimes without hearings, often in consequence of the clutter of records passing through the Bureau of Immigration, and frequently despite their innocence, was not meager. Their suffering was incidental to a policy that can be excused only as a symptom of delirium.

CHAPTER XXII

DEPORTATIONS DIRECTED

The number of deportations directed from January 1 to June 30, 1920, is specified in the report of the Bureau of Immigration for the fiscal year 1919-1920 as 556. This figure is probably not far wrong. It may be exactly right, although I should guess the number to be at least 100 more. It differs but slightly, however, from the the number reported incidentally by the Bureau for the period from January 1 to June 15, 1920, which was 562. The incidental report classified the cases according to causes for deportation, making, however, only two classes. From this classification it appears that of those 562 deportation decisions—nearly all of which I made, the Solicitor having made very few before turning the immigration work over to me—the number deported for mere membership in the Communist Party of America was 530. Those deported as "anarchists" and members of the "Russian Workers" are undistinguished in the report but they total only 32. In no instance was it shown that the offending aliens had been connected in any way with bomb-throwing or bomb-placing or bomb-making. No explosives were discovered, nor trace of any, nor any firearms except four pistols personally owned and some guns in the "property room" of an amateur theatrical group.

One important case illustrates the general character of the Communist Party membership cases in which I ordered deportation. The alien was John Dudinsky. The warrant of arrest had been issued upon the affidavit of a special agent of the Department of Justice charging, on information and belief, that the alien was a member of the Communist Party. At the immigration hearing he refused to answer crucial questions in the absence of counsel. The only evidence in support of the cause alleged for deportation proceedings was (a) a type-written copy, unsigned and in every other respect unproved, of what purported to be an examination of the alien made by a special agent of the Department of Justice while the alien was in the agent's custody; (b) a translation of a letter purporting to have been signed by the alien but without proof that the translation was correct or that the original signature was the signature of the alien; (c) a typewritten copy of the information-and-belief affidavit on which the warrant of arrest had been issued; (d) Communist Party membership cards in alien's name but without proof connecting him with them, beyond such inferences as might be drawn from their apparent genuineness and their being in his name; (e) a photostat copy of correspondence in alien's name but without proof of its genuineness; (f) typewritten protocols of the Communist Party without proof of their genuineness or alien's responsibility for them. On this record I concluded that notwithstanding the weakness of the proof against the alien there seemed to be sufficient law-

ful evidence in the record to put him to the defense of his right to continued residence in this country, and therefore I decided to open the case for further hearing. At the rehearing the alien still refused to answer questions, acting under advice of counsel, and I then ordered that he be deported as an alien member of the Communist Party.

A somewhat similar case, the original hearing in which I likewise opened for further proof, was that of Roman K. R. Consega. The warrant of arrest had been issued upon the affidavit of a special agent of the Department of Justice—one of the private detectives temporarily employed by that Department—charging the alien with being a member of the Communist Party. It was verified upon information and belief only, and at the hearing the evidence introduced in proof of the alien's alleged membership consisted of nothing but a mimeograph copy of the information-and-belief affidavit on which the warrant had been issued, and of a typewritten copy of what purported to be an examination of the alien by a special agent of the Department of Justice—also a private detective in that Department's temporary employment,—while the alien was in the incommunicado custody of the detective. This copy was unsigned, not sworn to, and unattested in any way. As evidence of anything but the inefficiency or worse of the officials who treated it as proof of the alien's deportability, it was as worthless as a blank sheet of foolscap would have been. If a resident alien could be unlawfully arrested as this one was, be brought unlawfully to a hearing, be there

accused of unlawful conduct, and be then deported because he refused to answer questions asked by his law-breaking inquisitors, no one, whether alien or citizen, would long be immune from similar outrages. Deciding, therefore, that the alien was under no obligation to answer the questions he had refused to answer, I ordered a rehearing for *prima facie* proof of the alleged cause for deportation, and upon the merits after rehearing I cancelled the warrant of arrest.

Among my deportation orders there was one which I felt bound to revoke after deportation had been actually effected. The alien was Julius Maninger, a young man of twenty-four who had come from Austria in 1909 and had lived here ever since. He had been arrested at Fort Wayne, Indiana, on the 2d of January, 1920, in connection with the nation-wide January raids. Four days later the warrant for his arrest issued from the Department of Labor. The charge against him was membership in the Communist Party. At his hearing before an immigration examiner five days after his arrest, the alien testified that he was an upholsterer and owned property worth about $1,275; that he had never been out of this country since his arrival in 1909, and that in 1916 he had made application for citizenship. No evidence against him was produced, but he was asked whether he belonged to the Communist Party and he replied: "No, I don't; but I unconsciously affiliated myself with it—that is, at the time a speaker was there and after the speech they held a vote, took up a vote, and I voted for it.

I was undecided at the time; I thought I would decide later on, knowing full well I could always back out if I didn't agree with the principles. Since then I have not made any application for membership in that organization."

With that statement on the record, the examiner pursued his inquiry, egged on by a Department of Justice detective, until from sheer weariness due to repeatedly denying conscious membership in the Communist Party in response to monotonous questions, and to explaining again and again the circumstances which proved his innocence, and being denied counsel to protect his rights, the alien finally assented to a formulated statement which the immigrant examiner put to him and which involved a formal admission of membership which was no admission at all when his entire testimony was taken into account.

Deceived by the alien's categorical answers, supposing his to be a case in which a false denial at first had been withdrawn and membership in the Communist Party unqualifiedly admitted, I made what any fair reader of the examination will agree was an erroneous decision, for I ordered that the alien be deported. He was accordingly deported, but several months afterward the Advisory Committee[1] which I had meanwhile organized in the De-

[1] In harmony with my judgment formed long before, that the Secretary of Labor when acting in immigration cases was not a perfunctory reviewing officer, but that he had exclusive responsibility—primary, intermediate and final,—I climaxed my strenuous experience in deciding the "red" cases by securing the creation, toward the close of the fiscal year 1920, of an

partment called my attention to the case in a carefully considered memorandum.

The alien had written from Austria asking permission to return to the United States. His letter

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Advisory Committee in the Office of the Secretary to act upon immigration cases in behalf of the Secretary. This Committee performed the advisory service theretofore performed by the Bureau of Immigration, but under the instructions and immediate supervision of the Secretary of Labor and with no pretense or appearance of authority to make decisions or to transmit recommendations having the color of decisions. Thereafter until the close of Secretary Wilson's administration of the Department of Labor, all *quasi* judicial authority in both exclusion cases on appeal and expulsion cases under warrants of arrest was exercised by the Secretary of Labor or his lawful representative, with the advice of his own chosen staff, the functions of the Bureau of Immigration being limited in these matters strictly to ministerial duties. A more complete explanation may be found at pages 73-76 of the Annual Report of the Department of Labor for 1920. The personnel of the Advisory Committee thus created was as follows during the remainder of Secretary Wilson's administration: Walter D. Davidge, chairman; Bryce Edwards, expert in contract labor cases; Charles E. Booth, expert in Chinese cases; and George W. Stillson. At the close of Secretary Wilson's term, his successor, James J. Davis, appointed Edward J. Henning to the office of Assistant Secretary (from which my resignation, conditioned to take effect with the retirement of President Wilson, had been accepted by the President prior to the inauguration of his successor), and Assistant Secretary Henning soon afterwards dispensed with the Advisory Committee and went back to the former practice. But after a few months' experience with that practice he re-established the advisory committee plan under more favorable conditions than those with which I had been obliged to contend. The plan has since been extended by Secretary Davis and Assistant Secretary Henning with the aid of Congressional legislation in what I regard as the right direction, its tendency being to separate ministerial functions from quasi-judicial functions—the sheriff from the judge. Under the new Congressional legislation, enacted in 1922, the office of Second Assistant Secretary of Labor was created and its first incumbent, Robert Carl White, was immediately assigned to the chairmanship of the advisory body, then called the Secretary's Board of Review. As originally constituted the personnel of this Board, in addition to the chairman, was as follows: Terence V. Powderly, Albert E. Reitzel and George W. Bope, with Carlos R. Blackwell as confidential messenger.

having been referred to the Advisory Committee for a recommendation, the Committee submitted a memorandum for my official signature from which I here quote the conclusion: "This little creature testified, confronted by two officers of the Government, before the inspector who framed his answers for him and a suggestive agent of the Department of Justice, the former persistently ignoring the alien's reason for which he said he was a member or believed in the principles, and the latter suggesting that the qualification be striken entirely from the record. Clearly the alien was right when he threw up his hands and explained he might as well go one way as the other. He was destined to walk the plank anyhow. The charges in the warrant are not sustained and cannot be established by such a low, vulgar travesty on justice as this record presents." The memorandum from which this quotation is taken was prepared and vouched for in behalf of the Advisory Committee by W. D. Davidge, Esq., a member of the Bar of the District of Columbia, who was at the time the chairman of the Committee.

Upon considering the recommendation of the Advisory Committee and re-examining the record of the case, I realized the error I had made in ordering the deportation of this alien and decided to rectify it if I could. But there were almost insuperable technical difficulties in the way. Under the expulsion law no one could give the deported alien permission to return to this country, and his returning would have been a crime. I therefore laid the matter before the Acting Solicitor, Herbert B.

Collins, for advice. In co-operation with one of his official associates, Albert E. Reitzel, Mr. Collins took the case into careful consideration. He was First Assistant Solicitor, a good lawyer and a cautious adviser; Mr. Reitzel was Second Assistant Solicitor, a man of democratic ideals, and also a well-trained lawyer. They prepared and submitted to me a memorandum which I adopted and signed.

Reciting that my original decision had "been based upon a misapprehension of the evidence in the case," and that this "evidence upon re-examination" proved "to be wholly insufficient to justify a decision of deportation," their memorandum closed with the following order to which my signature gave effect: "The case is hereby opened, the evidence reconsidered and the warrant of arrest cancelled. A warrant of deportation having been made on the basis of such warrant of arrest, the said warrant of deportation is for the same reason also cancelled. The alien having been actually deported pursuant to said warrant of deportation, it is hereby directed that he be advised of this decision and that application is hereby granted for alien to apply for admission within a year, and upon such application that he shall be admitted provided he is lawfully admissible in all other respects than such as apply to the fact of his having been deported." Of this decision the alien was notified by Departmental letter dated February 4, 1921.

Not only did the record in this case necessitate reversal of my original decision, but it very well illustrates the "head hunting" spirit in which most

of these cases were managed by detectives of the Department of Justice, and how through their unwarranted but dreaded domination, field officials of the Bureau of Immigration were influenced.

A curious phase of the "red" crusade is presented by another deportation decision of mine. The alien involved was Robert Elia, whose arrest was in some mysterious way connected with that of Salsedo, the prisoner who was sensationally killed in a drop from a high building to the street in New York. When I examined the Elia file early in May, 1920, I found nothing in it but a Bureau memorandum, a copy of an immigration officer's telegram for a warrant of arrest, a copy of the warrant dated more than two weeks earlier, and a telegram authorizing Elia's arrest and his delivery to an immigration station. The Elia case was wrapped in mystery. Although the detective division of the Department of Justice professed to regard Elia as a bomb-plotter and important in this connection as a witness, that Department was apparently more anxious, as the subsequent record shows, to get him out of the country than into the dock or the witness chair of a criminal court. The evidence before me showed Elia to be an "anarchist" of a type not indicated, but a "disbeliever in all organized government" and "opposed to all organized government." Those were the grounds, the only grounds, on which his deportation was or could have been ordered in accordance with any evidence before the Department of Labor, and it was on those grounds only that I ordered his deportation.

If the records in all the 562 "red" cases in which I ordered deportation were minutely scrutinized it would be difficult, even if it were possible, to select any more culpable ones than those I have described in this Chapter. In nearly every deportation case the record disclosed nothing but some variety of proof of mere technical membership in one or another organization which the Secretary of Labor had held to be within the proscription of the alien deportation laws. And in most of those cases it was apparent that the alien had neither suspicion nor cause for suspicion that the organization was unlawful. There were few cases in which any reason appeared in the record for inferring guilty knowledge on the part of the alien, and in most of those in which such an inference would have been reasonable there was no other ground for the inference than that the alien held office in the organization—usually the office of secretary for a subordinate unit.

In addition to the preponderating proportion of deportations for membership, there were a few cases in which the alien was proved to hold "anarchistic" opinions. But in all these in which the proof was at all clear, the "anarchistic" opinions were of the extreme pacifist type. A single instance of any anarchistic opinion of the violent revolutionary type was as great a curiosity as a "sport" in a herd of cattle.

Quite regardless, however, of their personal guilt aliens who were proved to be anarchists in any sense of that word, or actual members of the proscribed

organizations, were mandatorily subject to deportation. In such cases I had no discretion, however innocuous the alien might be. Consequently, and guided by the principles of decision I have already summarized, I decided to deport in every case in which it appeared that the alien was within the scope of the alien deportation statutes, though he were only technically so.

Those decisions evoked no denunciations from influential quarters. Naturally not, for the deportations delirium was then at its peak. Or, may be it was respect for law that inspired such tolerance toward the deportation of harmless aliens who had offended without knowing it. But when the proof did not bring the alien within the deportation statutes, denunciations whirled toward me like cyclones for deciding against deportation.

CHAPTER XXIII

DEPORTATIONS DENIED

Although I tried to test each case in the enormous mass, by the principles of decision which are summarized in a former Chapter, a more complete understanding of my cancellation decisions, those in which I deny deportation, may be obtained by considering a particular case which seemed to me at the time of my decision, and seems to me still, to have been typical of nearly all the cases in which I decided in favor of the arrested aliens.

While the Bureau of Immigration was still gesticulating with "decisions" disguised as "recommendations," but so thinly disguised that its phrase "therefore the Bureau finds and so decides" emphasized its adjudicating assumption, an attaché of the Office of the Secretary who had been detailed to the Bureau at its request for the purpose of expediting transmissions of records of hearings, informed me in official confidence of a significant incident. It had to do with the typical case of which I am about to tell.

When the record of this case reached the Bureau of Immigration on its way to the Office of the Secretary of Labor for decision, it was caught in the clutter of other deportation records that were making the same snail-pace journey. Upon its emergence it was referred first to my informant,

the attaché who had been detailed to the Bureau from the Office of the Secretary. A trained and experienced lawyer, this gentleman, upon reading the record, was strongly impressed with the innocence of the alien. Being also a man of conscience and fearless he wrote a memorandum recommending cancellation of the warrant. As the record with that memorandum passed from him on its journey to the Office of the Secretary, it was stopped in the Bureau of Immigration and referred to another attaché. The stoppage lasted several days, a memorandum adverse to cancellation and directing deportation being meanwhile made.

When those circumstances came to my knowledge, I ordered immediate transmission of the record to the Office of the Secretary. Though this order was complied with promptly enough, the record did not reach me, owing to anterior delays, until early in April—nearly three months after the arrest and about two months after the hearing at the immigration station. By that time I had decided more than a thousand "red" cases in which the arrests were groundless, besides several hundred of those in which there was more or less inculpatory proof; and as this case appeared to be typical of most of those in which I had cancelled the warrants of arrest, I accompanied my decision with an extended explanatory statement, which was published in full in May, 1920, by the National Popular Government League of Washington of which Judson King was then as he still is the executive secretary.

The name of the alien in this typical case was

Thomas Truss. In the record of his hearing there was no evidence of any unlawful conduct, declaration or opinion, except membership in the Communist Party. His deportation hinged, therefore, solely upon the question of membership. Was he or was he not a member of the Communist Party within the meaning of the "red" deportation law?

Mr. Truss had authorized a Communist Party organizer to sign an application for membership in his behalf. But this occurred several weeks before the Communist Party adopted the manifesto which outlawed its alien members. The organization itself did not yet exist. Of course no proxy-signing nor authority for it could, in those circumstances, have any effect under the deportation law, unless confirmed in some way by the alien after the organization of the Communist Party.

The alien's understanding at the time of authorizing his application for membership was also important. He supposed, according to his own testimony, and this was consistent with the circumstances, that he was about to join an organization for socializing mines, railroads, etc., and thereby lowering prices as the Government postoffice had lowered postage.

Following his application for membership in the prospective Communist Party, Truss associated friends with him in the city of his residence to form a branch of the still non-existent Communist Party. Upon the actual organization of that party, this inchoate branch received a charter from it. But the branch postponed acceptance of the charter pend-

ing receipt of a copy of the constitution of the main body or the appearance of an organizer to explain the purpose and methods of the organization. As neither constitution nor organizer came, the branch dissolved and returned the charter—all in complete ignorance of the unlawful declarations of the general organization.

Upon those facts I decided that Mr. Truss was not a member of the Communist Party. This decision was the principal asserted cause for the attempt to impeach me which followed close upon my cancellation of the warrant of arrest against Mr. Truss.

Not alone in technical insufficiency of proof, but in several other respects as well, was the Truss case typical. Mr. Truss was an alien (a Pole by birth) and unnaturalized, slightly over thirty years of age, a resident of the United States for twelve or thirteen years, domiciled in Baltimore with his wife and three American-born children, an elder in the Polish Presbyterian Church of Baltimore, a coat-presser by occupation, a trusted leader in lawful labor organizations of his city, a man of good reputation in his community. Yet he was arrested without warrant and subjected to a police office inquisition by a secret service agent of the Department of Justice, who afterwards preferred charges against him in deportation proceedings. The original arrest had been made by a police trick. Truss was asked politely by two "plain clothes men" to go with them to a police station for the purpose of giving information about some matter regarding which he was

supposed to be able to help, and he assented. Told that the errand would detain him but a few minutes, he expected to return directly and therefore left no word for his family. Upon arriving at the police station, he was unceremoniously thrust into a cell where he was detained incommunicado until far into the next day, his family and friends being meanwhile frantic over his mysterious disappearance. During the second day of his confinement a Department of Justice detective subjected him in his cell to the police inquisition on the basis of which the warrant of arrest in deportation proceedings was issued two days later, he remaining meanwhile unlawfully imprisoned. Being then arrested lawfully he remained in prison, but not incommunicado, until released on bail somewhat more than a week after his original arrest.

Not in all its details, of course, was this case typical. But it was typical in general outline of a large proportion of all the "red" cases I decided after hearings under Labor Department warrants of arrest issued on *prima facie* proof of probable cause furnished by secret service agents of the Depart of Justice. The alien "reds" had been arrested, most of them in or in connection with the January raids, and forthwith imprisoned incommunicado; while so imprisoned each was subjected to a police-office inquisition, that is, to coercive questionings by their captors after the police customs of mid-European autocracies; on the basis of their reported answers, information-and-belief affidavits of probable cause to justify an arrest were

made and forwarded to the Department of Labor; thereupon the Department of Labor issued a warrant of arrest in each case, took over the custody of the alien "red," and proceeded as usual in warrant cases under any of the expulsion clauses of the immigration laws. When the hearings at immigration stations in the cases of alien "reds" were reported by the examining inspector through the Bureau of Immigration to the Secretary of Labor, verbatim (as the rules required the reports to be), I found upon officially examining them that there was no better proof to justify deportation in a large percentage of the cases than there was in the Truss case, which I have outlined above and characterized as typical.

In some the membership status was "automatic," the alien having been transferred from a lawful organization to the unlawful one by vote of a group or branch of the former and without his knowledge. In some the alien had knowledge of the transfer, but none at all of the character or purpose of the organization to which he had been automatically transferred. In others he had signed an application for membership before the unlawful organization existed and had never confirmed membership by any expression or conscious act. Sometimes an organizer or friend had, without the alien's knowledge, signed the application in his behalf but he had never confirmed it. In the great majority of all the cases, personal culpability even to the extent of knowledge of the transfer in the "automatic" membership instances was wholly lacking.

The records seldom showed any cause whatever for deportation other than a purely technical one. It seemed to me at the time, and the impression has been deepened by subsequent developments, that if there were any alien conspirators in the United States who were at all dangerous to its institutions, its free institutions, the detectives of the Department of Justice did not "hit their trail."

As a rule the hearings showed the aliens arrested to be workingmen of good character, who had never been arrested before, who were not anarchists nor revolutionists nor obnoxious to the spirit of our laws in any other sense. Many of them were faithful fathers of American-born children. Nearly all had been subjected to arbitrary arrest, to long detention in default of bail beyond the means of hardworking wage-earners to furnish, and for nothing more reprehensible, so far as intent counted, than affiliating with friends of their own race, country and language. Cases in which there was substantial proof of any unlawful act with sinister intent or guilty knowledge were exceptions—very rare exceptions.

CHAPTER XXIV

DISTINCTIVE CASES

Although most of the cases in which I cancelled the warrants of arrest were as ill-founded as the typical case described in the preceding chapter, there were a few about which genuine differences of opinion might be possible—especially in a period of delirium. Among these was one of a type so different from the possibly doubtful two told of in Chapter XIX that it should be given a place in my narrative.

It was the case of Louis Wirth, a young man of German birth, twenty-two years old, who had come to the United States at the age of fourteen. Five years after his arrival he entered the Chicago University as a student, having graduated from a high school in Nebraska. At the University he received his degree with special reference to his qualifications as a student of social science. This was six months before his arrest. During his educational period he earned his living as a teacher and also as a field investigator in the Market Analysis Department of the Chicago Daily News; and for the six months immediately preceding his graduation he worked in one of the departments of the American Red Cross. Immediately following his graduation he took up work in the Bureau of Personal Service at Chicago in the boys' division. The superintend-

ent of this Service, Minnie F. Low, a Chicago woman of impeccable Americanism, described him as "the personification of obedience to law and order," whose good character and competency had led to his assignment to the Boys' Court of Chicago, where he "worked in perfect co-operation and harmony with the court and all persons connected with it, and did so in a whole-hearted way." So keen was his insight and his sympathetic understanding of the human problems coming to his notice, as his superintendent further described him, and so unusual his "ability and conscientious devotion to duty," to quote her language further, that "in the short period of six months several promotions were given him," up to the grade of senior in his division. He had intended to become an American citizen, but before reaching the naturalization age he was barred by the War and his German nativity. By the professor of history under whom he had studied at the University, he was described as a man of superior mental qualities whose habits were regular, whose self-discipline and his tolerance of the opinions of others commanded respect, and in whom during three years' association the professor had, as he wrote, "never discovered the least trace of addiction to the methods of violence."

Young Wirth was arrested in the Chicago raiding of January and held in custody at a police station without warrant, and for five full days without even being "booked." Meanwhile his friends were ignorant of his whereabouts, and from neglect he suffered hardships that nearly culminated in his

death. A Department of Labor warrant of arrest was issued at last, and under this he was bailed and given the regular examination before an immigrant inspector.

The only charge against Wirth before the inspector was membership in the Communist Party, and to support this charge no evidence was produced except his replies to questions put to him at an unlawful and secret inquisition by his custodian during his lawless incarceration at the police station.

At his lawful examination before the immigrant inspector, Wirth was asked whether or not he had ever been a member of the Communist Party. He replied: "One time I thought I was; I do not know whether I am or not."

Being further questioned, and with special reference to his alleged responses to his custodian's questions at the unlawful and secret police-office inquisition, he explained that he had been at one or two meetings of the Communist Party some time in September or October, 1919, and thought he had paid in as much as fifty cents, but did not know what the payment was for. A friend had paid it for him and he had reimbursed his friend.

Asked if he believed in the principles of the Communist Party, he replied that he "could not say" that he did. But questioned more specifically and with direct reference to the objectionable Communist documents, he answered: "I do not believe that all means should be used to gain the victory of the workers. I believe that all lawful means should

be used to gain victory for the working classes. To obtain that victory by means of force or violence, I would seriously object to that."

Asked if he believed in the principles of the manifesto and program of the Communist Party of America, he replied: "No, sir."

To further questions by the immigration examiner, young Wirth explained his superficial membership in the Communist Party in these words: "I was a student of social and political science, and I was writing my master thesis in the department of sociology and on some phases of the Communist movement; and I felt, therefore, it was necessary to come in direct contact with the movement. I had carried a good deal of literature on the subject I was studying, and I felt as a young man I was not doing anything wrong in belonging to such a movement. I thought it was a perfectly legitimate movement. I thought it was lawful. I had no idea it could be considered wrong to belong to the Communist Party of America. No one told me about that."

Asked then if he believed in organized government, he said he did; if he believed in the soviet govment of Russia, he said he did not; if he had signed an application card for membership in the Communist Party, he said he had not.

With that examination record before me, a record void of any other proof against the alien, I cancelled the warrant of arrest.

Referring afterwards to this decision while testifying in inchoate impeachment proceedings against

me, I characterized the Wirth case as one "on which any jury might well have disagreed." Having now again read all the testimony in the case, I am obliged to confess that in that remark I was unjust to jurymen. It would be a reflection upon the intelligence of any American juror to imply that he could have stood out for a verdict of guilty on no other evidence than the Wirth-case record presented.

Of the more distinctly frivolous class of cases in which I cancelled warrants of arrest, there were several varieties. In one of them the alien was arrested early in January but the warrant of arrest did not issue for more than a week. It charged membership in the Communist Party. The only item of evidence against the alien, besides an affidavit made merely "on information and belief," was a Communist Party membership card of which he denied all knowledge, and regarding which there was no proof connecting him with it other than similarity of name. From his testimony, confirmed by some of the circumstances, this alien had been arrested by a man in civilian clothes who did not explain his authority nor show a warrant of arrest but who took the alien to the city hall, where he was subjected to a police inquisition. He was then taken to a neighboring city where he was photographed against his will with about 100 other "red" prisoners. At his lawful hearing there was no evidence except his own testimony from which any inference could be drawn. This testimony was to the effect that he was a member of the lawful Socialist Party, and that if his branch in that party had been trans-

ferred to the unlawful Communist Party—as was asserted against him—he didn't know it for he had attended no meetings and had heard of no transfer.

Besides thus exonerating himself without contradiction from an unproved charge, this alien testified that he and others arrested in like manner with him were threatened with violence by two men in uniform and some Polish detectives, for refusing to answer police-inquisition questions. "The Polish detectives leveled revolvers at us," he asserted, "saying that if we do not answer those questions we will be killed." The questions were "whether I am a Communist, whether I belong to the Communist Party." Similar sworn assertions were made by other aliens arrested in like manner, but as all were denied by detectives or policemen present at the inquisition, the truth of the matter cannot now be determined. No serious attempt was made at the time, and the only present recourse is an appeal to the probabilities. One of the larger facts upon which such an appeal would rest is the well-known practice, toward which the courts have for several years been dangerously complacent, of giving the "third degree" to prisoners in the secret custody of detectives. This practice was imported from Prussia in the mid-eighties by Inspector Byrnes of the New York police. Its efficiency in making cases regardless of guilt, popularized it with inefficient detectives. It was probably resorted to by the private detective attachés of the Department of Justice in connection with the January raids. Very likely, therefore, this alien told the

truth when he charged the use of police intimidation for the purpose of extorting a "confession" in his case.

In a somewhat similar case, in which also I cancelled the warrant of arrest, the only evidence tending to justify deportation was the alien's statement, made while in the unlawful custody of a special agent of the Department of Justice twelve days before the warrant of arrest issued. In this statement the alien was recorded as admitting membership in the Communist Party. He had signed the statement at four or five o'clock in the morning following the raid, immediately after his delivery at the detective rendezvous and in reply to questions put to him there by the detective who held him in close custody during the questioning. I cancelled the warrant of arrest in this case on the ground that whether or not the maltreatment testified to by the alien, and confirmed by another arrested alien who was present, but denied by the arresting officer, had occurred or not, his "confession" had manifestly been made under police duress, and without it there was a total failure of proof of any unlawful membership.

Another type of cancellation cases was represented fairly enough by one in which, upon the alien's arrest by Department of Justice detectives without warrant, they questioned him and inserted their own version of his replies in a mimeographed question-blank which they caused him to sign and swear to. According to this document the alien seemed to have admitted categorically that he was a member of the Communist Party, and this appar-

ent admission alone constituted the evidence against him at his lawful hearing. There was nothing else. On the other hand, from his uncoerced testimony at the lawful hearing it appeared that the alien had joined the Communist Party without any knowledge of its program, and upon the understanding that he was joining a school for the study of mechanics, having done this in preference to going to public school because he did not understand English. Not until he was arrested did he discover that the organization he had joined in order to advance his education as a mechanic was unlawful, and upon making that discovery he immediately gave up his membership. In cancelling this warrant I explained on the record that the case against the alien depended upon his voluntary statement at his lawful examination that "he belonged to the Communist Party without knowing its program and only because he wished to join its school to learn the trade of a mechanic," and that in my judgment it was "not probable that Congress intended by the Act of October 16, 1918, to deport members of an unlawful organization who have become such under these circumstances, and who, upon discovering that the organization is unlawful, have withdrawn from it.

More distinctively frivolous was the evidence against an alien who admitted joining the Communist Party prior to March 10, 1919. As the Communist Party did not exist until September, 1919, this admission proved nothing. There was no other evidence.

Still another type of my cancellation decisions

was exemplified in the case of an alien who, while a member of the lawful Socialist Party, had been transferred automatically by a vote of his local branch, in which he did not participate and of which he was ignorant, to the unlawful Communist Party, which credited him with payment of dues for three months. His explanation of payment of dues fitted many other instances of automatic transfer. Here it is: "At the time when I joined the Socialist organization I paid four months' dues, and I never knew that it was turned over to the Communist Party."

In a case involving still another distinctive phase of "automatic membership" in the Communist Party, the only evidence against the alien was a copy —not the original, but a copy—of his unlawful examination by a Department of Justice detective. It gave no indications of having been sworn to in the original, or of having been even signed in the original, and its contents were neither certified to nor sworn to as a copy of an original. No witness had been examined at the lawful hearing, and at that hearing the alien refused to answer questions. In still another case the only evidence of membership was a membership card of the Socialist Party dated three months before the Communist Party existed. In a third, nothing more vicious was proved against the alien than that he was a versifier who might not be regarded as a poet of any classical school. In a fourth, a Russian revolutionist of 1905-1908, who declared his belief in soviet government for the United States if adopted by the people without vio-

lence and by means of our legal methods, but opposed overthrowing this Government by force or violence, was on the way to deportation as "a fugitive from justice" from the Russia of the Czars! I cancelled the warrant under which he had been arrested, upon the indisputable ground that no deportation law of ours applied to such a case.

In some of the particularly distinctive cancellation cases, the aliens arrested had refused to answer questions, and for this refusal alone, notwithstanding that the record contained no incriminating proof, not even the record of a police-office inquisition, nor so much as an uncertified copy of the alien's answers at such an inquisition, deportation was demanded. In this class of cases I took the ground, as set out in one of my memorandums of decision, that—

> "although deportation cases are not criminal cases in the technical sense, and are therefore not subject to the rules of criminal prosecution, they are nevertheless of a penalizing character and should be conducted throughout with a reasonable regard for the safeguards which the American Constitution and the principles of American liberty are designed to throw around every resident of this country (whether alien or citizen) for the protection of his person as well as his property. It is therefore requisite that no warrant of arrest issue in these cases except upon probable cause. Proof of probable cause may be supplied by an affidavit made upon information and belief. But it is to be assumed that when a complainant makes

such an affidavit he in fact has information justifying his asserted belief. If he has not such information, he has sworn falsely. Consequently, when the case comes to a hearing, he should be able either to produce his informant as a voluntary witness or to furnish the examining inspector with the facts necessary to secure compulsory process. At any rate, the resident alien must be confronted with lawful *prima facie* proof of his culpability under the deportation statutes before any adverse inference can be drawn from his refusal to answer questions. Mere fishing expeditions in these cases are not to be encouraged. The notion that resident aliens are bound to prove affirmatively that they are not unlawfully in the country has no justification in the United States under the Federal Constitution. The impression that they are so bound when arrested on the warrant of the Secretary of Labor is probably due to the conventional form of the warrant of arrest, which directs that the accused alien be arrested and given a hearing 'to enable him to show cause why he should not be deported.' But this expression means no more than that the alien shall be allowed to show cause, not as a preliminary condition of continuing to reside here, but in defense of his right to remain after he has been confronted with *prima facie* proof that he has been found here contrary to law."

The part of my decision which I have just quoted was criticized at the time as being in conflict with

a decision of the Supreme Court of the United States.[1] But there was no conflict. The criticism belonged in the class of "case-law" criticisms which are so faithful to precedent that they sometimes overlook essential differences. The essential difference in this instance was noted by that excellent authority, Clement L. Bouvé, in these words: "Since by general intendment the immigration laws impose the burden of proving the fact of the alien's ineligibility thereunder on the Government, the obligation to prove the contrary can only rest on the foreigner seeking admission, where the law clearly provides that such is the intent."[2] As to that Supreme Court decision, one need but read it to realize that it applies only to such of our immigration laws as affect the residential rights of Chinamen. This decision of our highest court was made in the case of a Chinaman claiming residential rights, and it sustained his deportation on the ground that by our laws affecting the residential rights of Chinamen the burden of proving this right is imposed upon the Chinaman claiming it. Congress has not imposed that burden of proof upon alien residents who are not Chinese. That it has the power to do so is, indeed, involved in the principle of the Supreme Court's decision; but until it does so, the

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[1] Fong Yue Ting versus the United States, 149 U. S. Reports, page 698.

[2] "A Treatise on the Laws Governing the Exclusion and Expulsion of Aliens in the United States. By Clement L. Bouvé, of the District of Columbia Bar, Member of the American Society of International Law. Washington, D. C., John Byrne & Co., 1912." Page 553.

general rule as to burden of proof prevails in alien expulsion cases in which the alien is not a Chinaman.

The deportation cases I have so far outlined illustrate every variety of all the "red" expulsion cases which, as Assistant Secretary of Labor, I was charged with deciding. That they do so fairly, I am sure. As to those which directed deportation, there were few protests. Not so with my cancellation decisions. They stimulated hostile activity in private detective centers and publicity bureaus and gave birth to a movement in Congress for my impeachment. The story of this Congressional movement and that of the widespread newspaper villification which preceded and accompanied it, together with that of the futile effort of a busy and afterwards discredited clique in the American Legion to induce President Wilson to remove me from office when the impeachment scheme collapsed, must be reserved for coming chapters.

CHAPTER XXV

IMPEACHMENT PROCEEDINGS INITIATED

While I was busy with my official work, employees of the Committee on Immigration and Naturalization of the lower house of Congress, of which Albert Johnson of Washington State was chairman, were scrutinizing immigration records in the Department of Labor and reporting sensational discoveries to their committee. This committee, or a branch of it, led by its chairman and reinforced by its sergeant-at-arms, had called upon me for the purpose of requesting permission to make the scrutiny and I had granted its request. My only reservation required that no records be taken away from the Department building, but I directed that ample accommodations and facilities within the building be provided. One outcome of the visitation was a sub-committee report on which proceedings for my impeachment were afterwards based.

A hotch-potch of extracts from immigration records, this report had been compiled by the Committee's sergeant-at-arms, assisted by an official of the immigration service at Seattle who had amusingly distinguished himself by officially putting Henry George's "Land Question," Thomas Paine's "Age of Reason," William Morris's "Useful Work and Useless Toil," and Schaeffle's "Quintessence of Socialism" in an improvised *index expurgatorius* as

"anarchistic." The report was rich in false leads which might have had a malicious origin but were crude enough to have sprung out of nothing worse than mental dullness at high tension.

One of its misleading statements—of much importance, as the sequel showed—implied that the Assistant Secretary of Labor, at whom it aimed its accusations and insinuations, was subordinate in the Department of Labor to the Solicitor. In truth the Solicitor neither had nor professed to have any Departmental authority except in the absence or inability of both the Secretary and the Assistant Secretary, whereas in the absence or inability of the Secretary, or by his direction regardless of his absence or inability, all Departmental authority vested by law in the Assistant Secretary.

Another of the false leads of that committee report indicated that in my decisions cancelling warrants for the arrest of accused alien "reds," I had arbitrarily balked other officials by setting aside decisions of theirs which I ought perfunctorily to have approved. Quite at variance with that estimate of my official obligations was the Act of Congress from which I derived my authority and by which I was bound. This law explicitly vested in the Secretary of Labor every particle of alien-expulsion authority and responsibility. To no one else except his Departmental representative (myself in the instances under consideration) did it give so much as a twilight shadow of authority to make either decisions or recommendations.

All this should have been known to the officials

who prepared the report of the immigration committee. But in their zeal they jumped with agility to the conclusion that the Bureau of Immigration had lawfully made decisions which I had unlawfully killed. The fact that what the Bureau called its "decisions" were of no more legal value than crumpled paper in a waste-basket was not to them obtrusive until, to their embarrassment later in their pursuit, they learned that my "cancellations" had no reference to anybody's decisions but my own, that they set at naught nobody's authority (whether primary or secondary) but that they were brief records of decisions by the only official then in the Department of Labor who was invested by law with authority to decide.

Yet the chairman of the committee and its sergeant-at-arms drenched their committee report with their notion that the Commissioner General of Immigration possessed authoritative advisory powers. So absurdly influential with them was this obsession that they burdened their committee report with the full text of long memorandums by the Commissioner General, ending with stereotyped recommendations and pseudo decisions—all written by subordinates who dared not write otherwise. In the report notations followed each memorandum, showing that I had overruled or ignored the recommendatory decision.

The strongest objection to embodying such memorandums in the committee's report would be the useless printing expense it involved; for otherwise their reproduction in print was harmless. But the

obsession had such a hold on the chairman of the committee that while inserting this legally useless collection of memorandums for the purpose of proving that I had made lawless decisions in the cases to which they related, he neglected to insert the records of evidence on which alone the law rquired me to act!

In advance of the impeachment proceedings thus instigated, "news" outgivings by members of the immigration committee and publicity agents of the Department of Justice started a newspaper cyclone of misrepresentation which did not wholly subside until the impeachment proceedings had collapsed.

This cyclone derived its greatest impulse from a speech purporting to have been delivered from the floor of the House of Representatives by the chairman of the immigration committee. Chairman Johnson's speech preceded his committee report by more than a week—the testimony of the sergeant-at-arms and the raft of records which constituted that report not having been given to the committee until April 21, whereas the chairman's speech got into the Congressional Record as early as April 12. Though this news-making speech appears to have been delivered from the floor of the House in eight minutes, the official report of it filled considerably more than eighteen columns—long, wide and closely printed in small type. It was evidently one of those "silent speeches" that Congressmen are allowed to insert in the official record of proceedings in the lower House. They are not delivered from the floor, are in fact no legitimate part of the

official proceedings, and are printed in the Congressional Record so as to permit the mailing of copies without limit, without postage, and without personal responsibility for false statements.

There had already been some degree of newspaper publicity, enough to set the conspiracy going. About three weeks earlier a somewhat sensational newspaper "beat" had gone out, poorly disguised as an official "leak," and this publicity prepared the way for further publicity. On the authority of those newspaper revelations, editorial comments assumed, to quote from one of them in the New York Times, that "Assistant Secretary Post, in charge of the Department [of Labor] had cancelled the deportation warrants of more than 1000 Reds arrested by the Department of Justice and had let loose on the country these public enemies, some of them fugitives from justice." This mention of "fugitives from justice" must have alluded to the solitary fugitive from the dominions of the Czar whom I refused to extradite, first because there was no evidence of any kind against him, and second because extradition proceedings were not within my jurisdiction. A few days later the same paper published further "news" on the subject, but it was not until Chairman Johnson of the immigration committee had given to the press copies of his "silent speech" of April 12 that the newspaper cyclone began to whirl in earnest.

On the day following the official publication of that silent but stirring speech, such headlines as this indicated with approximate accuracy the con-

tents of most of the newspaper reports: "Post scored as friend of enemy aliens—Johnson, House immigration chairman, cites cases of alleged favoritism—tells of Reds freed—declares he believes Labor Department is 'being bored from within.'" Another headline announced that "the Assistant Secretary of Labor is charged with being easy on Reds"; another that he "is accused of friendliness to radicals and said to have blocked deportations." And so the cyclone whirled. The news reports to which such headlines related were not as a rule calculated to minimize the sinister suggestiveness of the headlines, although there were notable exceptions.

To careless news readers it must have seemed that I had betrayed my trust. They could not have guessed that I had offended by deporting only such aliens as were proved guilty and releasing the others, instead of pitching all of them out of the country indiscriminately. Nor did such cautious reservations as "it is charged" or "he is accused" at all modify the misrepresentations in the minds of the general run of newspaper readers.

By some of my fellow citizens newspaper publicity of that kind is valued as second only to newspaper praise. Theirs is an estimate which appears to have originated with Phineas T. Barnum, the great advertising showman of my boyhood, who made no secret of his preference for vituperative publicity rather than silence. But I confess to a shrinking from such publicity. At any rate I prefer the kind of vituperation that keeps within hailing

distance of the truth, over that which depends for its abusive vigor upon misrepresentation. Frankly, then, I did not enjoy the gyrations of that newspaper cyclone as it swept across the country. For nearly seven years I had served the Government of the United States as Assistant Secretary of Labor. I had not sought the office and was averse to taking it. It came to me in the Spring of 1913 without solicitation on my part, directly or indirectly, and I accepted with reluctance after twice definitely declining. During my incumbency I administered its varied and often perplexing and harassing functions as well as my abilities permitted. And now, as my second term was drawing towards its close, I took no delight in being caught up in that cyclone of vituperative newspaper publicity. But "news" was news, and the press of the country emitted blast after blast of second-hand falsehoods and machine-made editorial censure which must have deceived hosts of fair-minded readers.

In the midst, however, of this unwelcome newspaper attention, I had many experiences to be grateful for. The Secretary of Labor, for instance, assured me of his hearty approval of the policy I was pursuing. Several newspapers and other periodicals treated it with reasonable fairness, some with thoughtful commendation. Among them were the Chicago Evening Post, William Allen White's Emporia (Kansas) Gazette, the Johnstown (Pa.) Democrat, the New Republic, the Seattle Union, the New York Evening Post, the Nation, the San Francisco Star, Reedy's Mirror of St. Louis, the Fargo (North

Dakota) News, the Hearst papers, the Christian Science Monitor, the Springfield Republican, the Nebraska State Journal, the Fort Wayne Journal-Gazette, the Chicago Record-Herald, the Chicago Tribune, the Survey, the New York World, the New York Call, the Washington Searchlight (now the Spotlight), Labor (published at Washington), the Advocate of Peace, the San Francisco Call, the Non-Partisan Leader.

One Washington newspaper man, Gilson Gardner, wrote on the subject to President Wilson, saying, "I have had reason to make a personal investigation of the so-called raids on the reds and the handling of these cases after the raids. If half of the facts were known to the public there would be a demand for the impeachment, not of Mr. Post, but of Attorney General Palmer and Mr. Caminetti."

Through one of the news letters of David Lawrence—all of which were considerate, substantially accurate and quite impartial in spirit—I was encouraged by an unmistakable indication of President Wilson's favorable attitude toward the policy I was trying to pursue. In this letter, Lawrence reported the President as having given "the impression to his Cabinet that, while the Government should proceed relentlessly against disturbers of industrial peace and deport aliens found guilty thereof, he wanted the judicial process to be painstakingly fair."

Nor do I overlook the important historical fact that Congressman George Huddleston, a democratic Democrat from Alabama, followed Congressman

Johnson's "silent speech" of April 12, 1920, with one on April 23 on his feet and on the floor, in which he vigorously denounced the lawlessness that Johnson had sponsored. "You gentlemen," said Mr. Huddleston, "have read in the newspapers about the raids upon aliens—unconstitutional raids, raids without process of law, raids in which American citizens, women as well as men, were arrested, were beaten, were dragged to jail and held without legal process . . . A well-informed gentleman from New York City said to me that a great many of those who were arrested did not so much as know the difference between 'bolshevism' and 'rheumatism.' They were illiterate, they were poor, they were friendless aliens, many of them, and away from home. They were not voters and they had no money; they had no voice, and so they had no champion . . . Only a few if any of those caught in the raid had any real knowledge that they belonged to a party which advocated force. Numbers of those arrested were women. Numbers of the men arrested were American citizens. They were beaten and dragged off to jail. The citizens were subsequently weeded out and released, as were also a great many others who had been arrested and against whom no charges whatever were made. Many private houses were invaded without legal process, furniture was broken up, wives and children insulted and husbands dragged away. Private papers were seized and carried off for evidence. There was no process of law for any of this, but the newspapers had been tipped off so as to get big

stories . . . These raids on ignorant aliens no doubt had an effect, but what effect? Do they love America more? Is it yet their ideal as a place of refuge and justice? Will they make better citizens? Do they respect our Government more? Will they work harder? They may not strike, but will the output come from the factory where they are employed? Oh, a lawless people is bad enough, but a lawless government is infinitely worse."

Although the newspaper cyclone kept on whirling, it began to lose force as the facts got to the attention of responsible newspaper men. David Lawrence's letters led the way, but the New York Survey, especially through its publication of an absolutely accurate summary from the pen of Francis Fisher Kane, contributed immeasurably. So did the New York World when it realized, as a World correspondent explained its editorial impression to me, that I "was not getting a fair deal." So many, indeed, were the newspapers and periodicals which, indirectly or positively, after the facts came to light, sustained the policy for which I was by others denounced, that it grew difficult to realize the earlier violence of the cyclone.

Rumors of impeachment had followed close upon the nation-wide echoes of Chairman Johnson's "silent speech." Those rumors were quickly verified by the formal introduction of an impeachment resolution. This lightsome burden was assumed by a Kansas Congressman of the name of Homer Hoch, a youngish man of forty-odd. He had been tempted by more seasoned members who assured him that

his connection with the impeachment case as prosecutor would make in that delirious time excellent material for his second Congressional campaign. His impeachment resolution having been prepared for him, this young Kansan rose in the House to offer it. But he was headed off by his party floor-leader, Mr. Mondell of Wyoming, who in an undertone suggested: "I would not do that now." So Mr. Hoch sat down.

Informal caucuses were immediately held in whispering groups here and there on the floor of the House and an understanding was evidently arrived at. The participants in these conferences were reported as fearing that a point of order might be raised if the impeachment resolution were offered from the floor. At any rate, later in the day on which his party leader had obstructed him, Mr. Hoch introduced his impeachment resolution by unostentatiously handing it to the clerk of the House under a standing rule for the informal handing in of bills, resolutions and memorials. It did not come openly before the House at all.

This resolution provided for a preliminary inquiry by the Committee on the Judiciary. But the Speaker referred it to the Committee on Rules.

The political wisdom of this course may be the better understood if considered in the light of the fact that the Judiciary Committee is a judicial branch of the House. It could not gracefully dispose of such a resolution without reporting its judgment. But the Committee on Rules is a political branch which could, without any breach of judicial

deportment, smother the whole proceeding if it discovered that the impetuous Mr. Hoch had gone off on a false scent. Like the nearsighted hunter of the familiar anecdote, the Speaker aimed to hit if the object were a deer, but to miss if it were a calf.

CHAPTER XXVI

AN ANGEL FROM THE BUSINESS SKIES

The impeachment resolution disturbed me seriously in only one particular. I was financially unable to make the vigorous fight which the circumstances seemed to require. While my adversaries would draw at will from the public treasury for the cost of waging their side of the contest, I should have to defend at my own expense. To meet the unfair challenge in good fighting form would exhaust my official salary for a year—it might be for two.

Several offers of financial support came to me, but they were from friends no abler financially than I. In the aggregate their contributions might have made a nucleus for a defense fund, but I shrank from "passing the hat." There were offers, too, of personal service without pay, which I sincerely appreciated and in some instances was able to avail myself of. I received also an offer of free professional service from one of the best lawyers of the District of Columbia, Jackson H. Ralston. But I was not inclined to accept free professional assistance. Yet the alternative was to make my defense unsupported and unadvised. I had, indeed, the specific assurance of Secretary Wilson that he would consider my impeachment his impeachment; but he

was no better off financially than I to enter full-armed into such a contest.

While brooding over those circumstances late one afternoon alone in my office after the Homer Hoch impeachment resolution had been referred to the Committee on Rules of the House of Representatives, and before I had decided upon my course in defending, a visitor was announced whose coming turned out to be like that of a winged angel descending through a dark cloud.

This very human angel interrupted my despondent reflections by telling me of a conversation about my impeachment to which he had been a party the night before, that convinced him of the seriousness of my situation. "In these circumstances," he added, "you will need money, need it bad, and I am here to tell you to draw on me at sight for ten thousand dollars."

The name of my visitor was E. T. Gundlach. I had known Mr. Gundlach since the trying days of the World War. One of that flock of "dollar-a-year-men" who descended upon Washington from the dizzy heights of profitable business, he was not only of the few who earned their salaries but of the very few who earned them highly multiplied.

Perhaps I should explain that Mr. Gundlach was not a radical of any type—except in the sense of not being a person of superficial mentality; that he was not in sympathy even with my type of radicalism, the Henry George variety, which regards the social values of natural resources as in their nature public property; that he was not a Socialist, nor an anarch-

ist even of the Tolstoy type, nor a Communist, nor an I. W. W., nor in any way connected with labor unions, nor a bolshevist in any of its multitudinous meanings in the epithetical vocabulary of the malicious and the vulgar. On the contrary he was a pronounced conservative, though without the bigotry that conservatism so often breeds in conservatives. Neither was Mr. Gundlach a pro-German, as the ultra suspicious might infer. Although of German descent, he actively agitated for our entry into the War as an enemy of the Kaiser during the two years just preceding our entering it, and was among the first to go to camp when we did enter. Nor could he have had any hidden political motive in making his generous offer to me. He was in no way interested in political preferments—a fact which all his acquaintances know and which is emphasized by his having resigned from the public service and gone back to private business as soon as the fighting ended. Since then his only connection with politics has been to cast his vote at elections. The motive for Mr. Gundlach's offer (which would not even now be revealed as his but for my insistence in order to forestall prejudicial misrepresentation) sprang out of his sense of public duty.

I did not hesitate long in deciding to accept his gift in the spirit in which I knew he was offering it. This offer seemed like a providential solution of the problem I was struggling with when his visit interrupted my meditations.

CHAPTER XXVII

OPENING OF THE IMPEACHMENT FIGHT

Having accepted the Gundlach offer to finance my defense in the pending impeachment proceedings, I retained Jackson H. Ralston as my counsel. Mr. Ralston began his career as a lawyer in 1878. Twenty years later his firm—Ralston and Siddons—represented the Filipino Republic. After that he was American agent and of counsel in the first international dispute before the Hague tribunal and then the American umpire with reference to Italian claims against Venezuela. He is author of a valuable legal work, "International Arbitral Law and Procedure," and of a later one suggestively entitled "Democracy's International Law." In addition to his activities as a specialist in international law, Mr. Ralston's practice had been extensive and included an active career at the bar of the Supreme Court of the United States.

Since Mr. Gundlach had given me *carte blanche* as to expenditures I gave like freedom to Mr. Ralston, instructing him to make the best fight he could, regardless of expense within the bounds of Mr. Gundlach's guarantee, and this he did. The total expenditure was $5,200, all of which Mr. Gundlach paid, refusing to allow me or anyone else to contribute, in view of the fact, as he said, that he was only keeping his word.

With my hearty assent Mr. Ralston called to his aid two associate counsel, Charles T. Clayton, who had preceded Hugh Reid as my official private secretary and was thoroughly familiar with immigration law and the immigration records, and Frank F. Nesbit, a promising member of the younger bar. These three jointly prepared the impeachment defense in every possible detail. Not only were they armed for the preliminary hearing before the Committee on Rules, but they had anticipated and prepared for every adverse movement by which that hearing might in regular course be followed, even to the possibility of a trial before the Senate. Nothing in the way of complete preparation remained to be done when the Committee on Rules finally granted me a hearing.

That I might have notice of all hearings was a formal demand of my counsel upon the chairman, who replied that there would be no hearings until the proponents of the impeachment resolution asked for them. Was it very unreasonable to assume from this reserved reply that a star-chamber proceeding might be contemplated? Four days went by and newspaper reports began to indicate that the committee was disposed to ignore the impeachment resolution in favor of a resolution recommending my removal from office by the President. Was it then unfair to anticipate a trick? Such a trick, whatever might be thought of its decency, would have been at least a shrewd one. Let me turn aside for a paragraph about it.

A resolution laid by the lower House of Con-

gress before the President demanding my removal, would have obliged me out of respect for him and his office to save him from embarrassment by resigning. Thereby I should have yielded my cause unless he had courted embarrassment by refusing to accept my resignation. Nor would my own resignation have been alone involved. Secretary Wilson's would have gone to the President with mine. I say this because, at an earlier date, when I proposed to him that I resign so as to quiet the disturbance that Attorney General Palmer was making in the Cabinet, Secretary Wilson urged me not to do so, explaining that if he transmitted my resignation to the President without his own he would seem to be rebuking me for my decisions in the "red" deportation cases, whereas in fact he was in perfect sympathy with me in the course I had pursued. "For that reason," he added, "and irrespective of all others," your resignation, if you resign, would "go to the President in company with my own." In those circumstances it was manifestly my duty not to resign.

But the circumstances would have been radically different if Congress had demanded my removal. I should then have been obliged to resign even if by doing so I made it seem to Secretary Wilson necessary that he also resign. Yet Secretary Wilson's resignation might have augmented any embarrassment of the President over a Congressional demand for my removal. By accepting Mr. Wilson's resignation as Secretary of Labor, the President would have seemed to place Attorney General Palmer on

a pedestal in the Cabinet; by declining it—which would have necessitated his declining mine also—he would have challenged a powerful business and political combination of which Mr. Palmer was then the pivot. I am therefore of opinion that the most astute move the combine in Congress could have made in connection with the proceedings for my impeachment would have been the one which they appear from the newspapers of the day to have contemplated—abandonment of the Hoch impeachment resolution and a recommendation to the House to demand that the President remove me.

To make that move effective, however, a unanimous report from the Committee on Rules was imperative. A mere majority report would have been discredited by a minority report though from only one member—discredited to the extent, at least, of subjecting the majority report to inspection, criticism and possible disaster in the House. But unanimity, if it had been arranged for, came to grief under circumstances I have yet to describe. For the present my story is concerned with the preliminary sessions of the Committee.

The first session was held on the 27th of April, 1920. My counsel having been notified, they were in attendance. The Chairman laid the impeachment resolution before the Committee and called upon Representative Hoch as its proponent to explain it; but Mr. Hoch, reserving his explanation temporarily, gave way to Chairman Albert Johnson of the immigration committee.

Mr. Johnson thereupon laid the basis for the

impeachment proceedings by introducing a public document, then "just printed," as he explained, by a subcommittee of his immigration committee. He characterized it as "a report of its investigations in Communist and Anarchist deportation cases." It was that subcommittee report the making of which by Chairman Johnson and his sergeant-at-arms I have already described.

When Mr. Hoch, following Mr. Johnson, addressed the Rules Committee as the proponent of the impeachment resolution, he made an admission to be remembered. "My own information," he said, "is based almost solely upon the hearings and findings before the immigration committee which you now have before you." In truth it was based upon nothing else.

Statements of no evidential value were volunteered by Congressman Tincher of Kansas and Congressman Siegel of New York. Nor was anything at all substantial added by anyone or in any way to the pretentious but utterly empty report of Congressman Albert Johnson's subcommittee.

At the same preliminary session of the Committee on Rules one of my counsel, Mr. Clayton, exposed the emptiness as evidence of that report; and my leading counsel, Mr. Ralston, emphasized Mr. Clayton's exposition. But the members of the Rules Committee, like the proponent of the impeachment resolution and his volunteer aids who sought to share his conspicuity, were so intent upon something else that for a time these plain explanations glided through their minds without making any im-

pression. They remained under the spell of Congressman Albert Johnson's baseless notion that in my cancellation decisions I had overruled somebody who had a legal right to advise dictatorially.

At the second preliminary session of the Committee on Rules, which was held on the 30th of April, Mr. Ralston's explanation of the case encountered volleys and also "snipings" in the form of question from members of the Rules Committee, from members of the immigration committee, and from various interested Congressmen, which indicated that the questioners were not primarily intent upon getting the facts. That the Rules Committee intended to make its investigation *ex parte* as nearly as possible, was manifest.

Until May 5, no meeting of the Committee was called after its session of April 30 when it had adjourned subject to the call of the Chairman; but meanwhile the Chairman was reported in the Washington evening newspapers of May 3 as having on that day said that there was no unanimity among the members of the Committee as to whether there should be further hearings. The day following those reports, I demanded in a letter to the Chairman, prepared for me by my counsel, that the hearings "be not closed without an opportunity expressly afforded for my personal appearance and for the production of witnesses on my behalf"; and in consideration of the reported purpose of the Committee to bury the Hoch impeachment resolution under a resolution demanding my arbitrary removal by the President, this letter closed with an explicit

notification that my action had been "the action of an Executive branch of the Government, and that my official judgment, save for criminal violations of law," could "be challenged only by impeachment."

The letter had its intended effect. On the 5th of May the clerk of the Committee informed me that the Chairman of the Rules Committee had directed him to notify me that the Committee would have a meeting on the morning of May 7, at which I would "be given an opportunity to be heard by the Committee" if I cared to appear.

I did care and I did appear. After giving my testimony—refusing in the course of it to be interrupted by the nagging which is so common with Congressional committees when they have an objective, but yielding to legitimate interruptions for incidental information—I submitted myself fully to cross-examination by anyone and everyone at the discretion of the Committee.

CHAPTER XXVIII

BEFORE THE HOUSE COMMITTEE ON RULES

Nobody can quite realize what he looks like or acts like, or the impression he makes, in such an ordeal as that through which I was passing before the Rules Committee of the House of Representatives in May, 1920. So I shall not venture upon any description myself. Inasmuch, however, as my appearance and behavior are doubtless part of the deportations story, I shall let others tell about it—one friendly witness and two unfriendly ones.

One of my two unfriendly witnesses is the Spokesman-Review, a conservative daily paper of national repute published at Spokane, Washington State. In its issue of May 8, 1920, this newspaper heralded its Washington correspondence with the following headlines: "Palmer's find in all raids only four pistols, two 22—Post hurls broadside at foes, in self-defense—Wins round one—Lands 'terrific wallops' on critics of his policy in 'deporting reds'—Is 71, full of fight—Flays Attorney General's work of persecuting men found innocent of wrong."

Those headlines were followed in the Spokesman-Review—and the Portland (Ore.) Oregonian carried the same report—with a summary of my hearing before the Committee on Rules in which the following descriptive passages occur:

"Louis F. Post, 71, Assistant Secretary of Labor, mentally supple, quick-witted, in his own defense today before the House Rules Committee was a living exhibit of vigor and sustained power. Despite his 71 years he seemed 25. He pounced upon Attorney General Palmer one minute, then hurled a charge of 'non-lawful' performance at Anthony Caminetti, Commissioner General of Immigration, and landed a terrific wallop here and there to the House immigration committee of which Albert Johnson of Washington is chairman. . . . The impression created by Mr. Post was altogether favorable to himself. He calmly waited for his accusers to exhaust themselves before replying, and when he did there was a feeling in the room that he certainly had 'shoved something over' on Attorney General Palmer, and that he had made some explanation necessary from the immigration committee of the House. . . . 'Cancelling a deportation warrant,' Mr. Post said, 'is nothing more than finding a verdict for the defendant.' This information impressed the Rules Committee because the idea had been general that the cancelling of a warrant meant that an order was issued to free the alien after he was found guilty and ordered deported."

Those descriptive passages from the columns of two unfriendly papers would seem at least to give color to the report of the friendly witness, Mrs.

William Hard in the New Republic, from which I now quote:

> "I suppose the witch burners had audiences. The hearing-hearers of Washington sometimes seem to be their lineal descendants. A large collection of them thickly lined the room of the Committee on Rules of the House to hear Louis Post baited. And they remained to see the torturer tormented. At the head of the table sits the gentleman from Kansas, Mr. Campbell; . . . there stands opposite the gentleman from Kansas the short shaggy figure of the Accused. But hardly a half score of questions had been given before it thrilled electrically through the hearing-hearers—even the most blasé of them—that this Accused was of a new and different variety. He anticipated attack, he welcomed it, he ran to meet it with every weapon of fact, of humor, of legitimate pride. So that by the end of the second afternoon Congressman Pou emitted an unexpected word. He confessed that the testimony had convinced him that Mr. Post had 'acted throughout the deportation cases with a high sense of duty as a conscientious officer.' The emotions that charged the air in that little committee room were identified with no party. They were the recognizable ones of fear and ignorance. Against these fears stood Louis Post, steadily adducing evidence whose predication was calm judgment upon proved fact, under the responsibility of executive decision. . . . Quite

clearly and soon it became manifest that out of the thousands of deportation cases which have passed over his desk, there were a large number of 'border-line' cases in which, if a man were to be anything but an automaton in office, he must find and hold delicate scales for judgment. Quite clearly and soon it became manifest that, whether of foreknowledge or not, the original report of the immigration committee upon which the present hearing before the Rules Committee is largely based, contains highly significant omissions of evidence. Memoranda and letters from agents of the Department of Justice, of the Department of Labor, of Mr. Post himself, are put in apparently conclusive juxtaposition. But the actual evidence upon which Mr. Post came to his final decision has in many of these cases been omitted. Again, the inference was permitted to broadcast itself that Mr. Post had somehow taken away from Mr. Caminetti certain prerogatives of punishment. In Mr. Post's testimony it soon became manifest and clear that those prerogatives had never belonged to Mr. Caminetti any more, as Mr. Post said, than they would have belonged 'to an office boy, or to a secretary of the Secretary employed to do clerical work.' . . . There were passages at arms in which somehow Mr. Post refused to remain in the role cast for him by the Congressional committee—that of an Unpatriotic Worm crossed with an Impractical Theorist,—and

became instead the Guardian of old-fashioned Americanism, and the Curator of Facts. At such times the hearing-hearers were treated to dialogues like this: The Worm—'As this committee might have found, the evidence and the memoranda did not tally.' The Committee—'During the years when only physical cases for deportation came before the Commissioner his report was accepted, but when political cases began to appear, you began to review?' The Worm—'I see your implication. I did not. Long before that I had been going direct to the evidence to make my own decision on it.' The Committee—'But the change was not made until there were political offenders involved?' The Worm—'The change was not made till I was convinced the Commissioner General was exceeding his authority.' . . . The Worm 'You have to define what the prisoner means by Anarchy. Often he will call himself an Anarchist when his meaning falls under no accepted definition. I fancy all of us here in this room are Anarchists in the sense that we need no law, no enforcement of law, to prevent us from picking each others' pockets.' Mr. Pou —'I beg to be excused from being called an Anarchist under that definition or any other.' The Worm—'I excuse you.' . . . Agitated gentlemen kept going into corners and emerging with a new question from another side of the room. Memoranda of unknown origin seemed to appear. But the shaggy blackhaired figure with

its seventy-three years borne so lightly on its square shoulders and shown not at all in voice or bearing kept on refusing to be a Worm. . . . As he stood there, unbowed, ungrayed by his seventy-three years, there seemed to pass forms, shadowy, real. They were the figures of the ignorant, the hampered, the misunderstood, the Aliens. Back of them were the terrified upholders of our Government. And back of them there seemed, shadowily, to be the Committee of Americanizers that sit in high places. But in the foreground, unterrified by the unreined emotionalism of either, stood a little man, cool but fiery, who set his belief in the Constitution of the country above all fears, and who could amass facts. . . . It was the very strong impression of the confirmed hearings-hearer that whatever the Campbell committee may finally decide to report, when it went away from that room in the Capitol on the afternoon of the eighth of May, it had very much the aspect of a group of gentlemen who had picked up a very hot poker and were looking for some place to cool it."

On the occasion referred to in those descriptive excerpts I began my testimony with an exposition of the immigration sub-committee report that had been introduced as the basis for my impeachment, stating that it was the work of some person possessed of very slight knowledge of even the procedure in alien deportations. Outlining then the lawful procedure and the kind and degree of au-

thority reposed in the different officials concerned, I explained that the deportation function was vested by law in the Secretary of Labor and in the Assistant Secretary (the Solicitor in certain circumstances) under the Secretary's instructions or in his absence, and that the Commissioner General of Immigration had no authority whatever except to execute the decisions of the Secretary, or, as the case might be, of the Assistant Secretary or the Solicitor. In making this explanation I was helped rather than hindered by the stubborn questions with which the Chairman interrupted me. Apparently, however, I made it so clear at last that the obstinate pretense that I had overruled some one with authority to decide, faded and withered and vanished.

Having disposed of that phase of this delirious impeachment proceeding, I drew the Committee's attention to the false pretenses with which the deportations delirium had been "doped." "In the course," I said, "of the development of the newspaper publicity—the newspaper drive that was made in order to create a great terroristic scare in this country—the newspaper publicity bureaus, the men that take a newspaper salary and another salary to misrepresent and to put false lights on situations and to create sentiment, took advantage of the discontent that is afloat in the country to make a terror," in consequence of which "the general public must have a vision of a great conspiracy to throw bombs and all that sort of thing." But "who were arrested?" From the moment that the

Secretary of Labor decided that membership in the Communist Party brought the member within the purview of the statute if he were an alien, "hardly an arrest was made upon any other ground than membership in the Communist Party. . . . But in all these sweeping raids over the country in which men were arrested at midnight and taken out of their beds at three o'clock in the morning in their homes, without warrant, in which their houses and their persons were searched without warrant—not by the Department of Labor; I do not undertake to say by whom, but that is the fact—these were the people afterwards brought to us, great raids made upon meetings and men rounded up and taken to police stations and a large proportion of them discharged before morning because they could not prove anything against them. With all these sweeping raids all over the country, there have been three pistols, I think it is, brought to our attention in the scores of cases that have come to us." And not only, I continued, were "nearly all the cases" that came to us cases of mere membership, but it was "almost impossible to believe that the men know they were doing anything but going to school or going to a social club of men from their own country and of their own speech." I then explained that out of the total of those membership cases, only about 40 prisoners, or possibly 50, were shown, either by confession or proof, to have been advocates of or believers in violent methods for governmental changes.

Advancing then to a consideration of individual

cases, I read my official opinion in the case of Thomas Truss of Baltimore which has been already fully described in these pages. Before I had gone far I was interrupted by an inquiry from Mr. Garrett, a member of the Committee, whose questions, if hostile, were nevertheless always considerate and rational. He asked if in my statement of principles of decision I had not applied to the administration of the deportations law the essential and fundamental principles of criminal law. Replying to this inquiry I said: "I cannot answer that question categorically, but I will state to you what principles I do apply. The Supreme Court has held that Congress has turned this whole matter over to our administrative department of the Government; that the question of whether an alien shall be allowed to continue to reside in the United States is a question of sovereignty and belongs on the Executive side of the Government and not on the judicial side. Consequently the courts have refused, on writs of *habeas corpus,* to interfere with the decisions of the administrative side of the Government in these cases unless there is absolute lack of jurisdiction. Where there is no evidence at all to support the case for deportation, the courts will interfere on *habeas corpus.* But they will not review the merits of the case, because, they say, it is a question of sovereignty turned over to the Executive department of the Government and they have no right to cross the line. Now, that is the attitude of the courts. My contention is—I will not undertake to say it is the Secretary of Labor's, but I have not

any doubt of it; I have followed what I believe to be his judgment as to all of these cases for the last five or six years—my contention is that when the Executive department of the Government is the absolute judge of whether a resident alien shall remain in this country or not, and the courts will not interfere, we should see to it that no injustice is done him. If he has lived here ten or fifteen years he has a domicile here, he is entitled to the protection of our Constitution, of our laws, and we should be all the more careful in judging these cases because he has no redress in the courts when an administrative judgment is given. And therefore I say that there are principles of the criminal law which ought to be applied by the administrative department of the Government unless there is the strongest reason, in each individual case, for not applying them. And that is the reason—not that I am applying absolutely the criminal law to administrative process, although I think the principles of criminal law, the protections of the criminal law, ought to be accorded; yet I know that we cannot accord them *as* criminal law. But I can take from the criminal law its humane, its just, its American, its Constitutional principles of protection to the liberty of the individual and apply them when I am acting for the Executive department of the Government. That is my mental attitude. Having found that the fate of the man is in the hands of the Executive department of the Government if there is the slightest scintilla of what may be evidence I consider that we should be all the more

careful; that we should not apply to cases involving human rights the rules exclusively that would apply to property questions under administrative process. Administrative process is a very dangerous institution for a country like ours to adopt with reference to personal liberty, and it is pretty near time that some check was put upon its development so far as it affects rights to personal liberty."

Recurring after that interruption, to the Thomas Truss case, fully described in an earlier Chapter, I called the Committee's attention to the fact that in this case, as in nearly every case relied upon for my impeachment, the evidence on which alone I had any lawful authority to make decisions, and on which I had decided those cases, was omitted from the bundle of evidence against me. Thereupon I laid before the Committee a verbatim copy of the official record of all the evidence in the Truss case. And inasmuch as the argument of the immigrant inspector who prosecuted the case and recommended deportation was already in the record as part of the immigration committee's accusatory report, I asked for the insertion of the counter argument of the attorneys for Truss—the law firm of ex-Judge Alfred S. Niles of Baltimore—which request, not without reluctance, the Rules Committee finally granted. The substantial parts of the record in the Truss case being then before the Committee on Rules, I discussed the merits of the case.

In the middle of this discussion the Committee on Rules adjourned from the 7th to the 8th day of May. Resuming my testimony in the late forenoon

of the latter day, I thought it well to emphasize the point already made, that the real issue in these deportation cases was "not whether the Secretary of Labor should deport men who came within the proscription" of the Act of Congress, "but whether he should deport men who do not come within that proscription." But the Chairman, still haunted by the ghost of the defunct notion that I was bound by the extra-legal judgments of the Commissioner General of Immigration, plunged again into a discussion of that matter. He came out of it no better than before; and, his interruption over, I took up other individual cases upon which the impeachment proceedings were based.

One was the Wirth case. In this case, as in the Truss case, the evidence was missing from the impeachment proof as presented to the Committee by the chairman of the immigration committee and the proponent of the impeachment resolution. I had it inserted in the record of the Committee on Rules. A full explanation of the case has already been given in these pages.

Another case to which I called the Committee's attention was that of John Dudinsky. The evidence in this case also was missing from the record upon which my impeachment was demanded, and I secured its insertion. This is one of the cases which I have described in a previous Chapter, but it played a part in the impeachment proceedings which necessitates a slight repetition. Dudinsky had refused to answer questions at his first hearing before an immigrant inspector. The evidence against him in

the record when it came to me was slight, but enough, as I thought, to put him to his proofs, and on March 22, 1920,—note the date,—I so decided, sending the case back to the immigration inspector for further hearing. Five weeks later the record of re-hearing came to me, showing that the alien still refused to answer questions. So I ordered his deportation. A day or two after my decision ordering Dudinsky's deportation, Congressman Davey of Ohio publicly denounced me for not having ordered it. A similar attack had been made a day or two earlier by Congressman Tincher of Kansas. Mr. Davey's attack was of course a boomerang, for it denounced me for not doing something which I had already done. But Mr. Tincher insisted before the Committee, and with an insolent air, that his attack had been made just before I acted, and with an insinuation that my action had been prompted by it. The insinuation was pointed but not piercing. Mr. Tincher found himself in the same frail boat with Mr. Davey, for my effective decision had been made long before either of them knew there was such a case as Dudinsky's. It was made on the 22d of March—five weeks before Tincher delivered his denunciation—when I granted the rehearing, deciding that there was "enough lawful evidence in the record to make a *prima facie* case, and thereby to put the alien upon his defense." As the alien did not make any defense at the re-hearing I granted him for that purpose, his deportation followed as matter of course. My decision to this effect was made before I had even a hint of the existence of

Congressman Tincher—or of Congressman Davey either, except as the author of a peace-time sedition measure in Congress (not enacted) that would have delighted George III.

Turning from the Dudinsky to the Magon case, of which much had been made in the way of denunciation, and which I have already described, I discussed it in some detail before the Committee. This was one of those exceptional cases in which my accusers had inserted the evidence on which my decision was based, as well as the extraneous memorandums, recommendations, "decisions," etc., on which, totally regardless of the evidence, they had relied in nearly all the cases on which they based the impeachment proceedings. In the Magon case the sole question was whether or not this alien was an "anarchist" within the meaning of that word in the deportation law. At his hearing before the immigrant inspector he had so labeled himself; but upon cross-examination by the inspector he explicitly described his opinions about government, and according to his unchallenged description he was distinctly a governmentalist and therefore not an anarchist.

The next individual case I discussed before the Committee was that of Bosco, the circumstances of which are fully presented in a previous Chapter. This case also was one of the very few regarding which my impeachers had submitted the whole record. So I was able to discuss it before the Rules Committee without first inserting the evidence on which my criticized decision had been made. On

the question of bail I explained that here was a man "entitled to an opportunity to be free until he could be deported; and in order to enable him to have an opportunity to be free, bail had to be fixed at a reasonable amount; fixing bail at $10,000 meant that he would remain in prison; fixing it at $1,000 meant all the security that we needed, just to get that man to attend the hearing of his case, and to be present for deportation when we had the opportunity to deport him, instead of being locked up at our own expense and at the expense of the personal liberty features of our Constitution." Then I put into the record of my hearing, the Eighth Amendment to the Constitution of the United States, which provides that "excessive bail shall not be required," explaining as I did so, that this Constitutional guarantee applies as well to aliens as to citizens.

Having finished with the Bosco case I took up a case in which, instead of cancelling the warrant, as the Commissioner General of Immigration advised, I had endorsed upon the record these words: "Let the Court decide." The contention against me seemed to be that, in order to prevent an embarrassing precedent I ought to have forestalled an adverse court decision in a case of deportation ordered by the Solicitor as Acting Secretary. In this case the Commissioner General had recommended deportation, and the Solicitor, acting in due course as Secretary at the time, had approved the recommendation. The alien sued out a writ of *habeas corpus* on the ground that there was a total lack of

evidence to support the deportation order which the Commissioner General had recommended. When the *habeas corpus* proceeding came before a Federal judge and he had heard arguments and read the record, he informally notified the U. S. Attorney that he would have to sustain the writ and free the prisoner. This information came informally to the Commissioner General, who submitted to me a memorandum in which he recommended that I cancel the warrant because the Judge "has already indicated what his decision will be, that he will sustain the writ," having "deferred decision with a view to affording the Department an opportunity to further consider the case." Instead of cancelling the warrant, as recommended, I substituted for the word "cancel" at the bottom of the Commissioner General's memorandum the words: "Let the Court decide." The Court did decide, by freeing the alien.

In connection with that case, the charge against me was to the effect that I was keen to let "red" aliens off until a judge was about to sustain a writ of *habeas corpus* in favor of one, and that then I refused to prevent an obstructive court precedent by cancelling the warrant. Outlining this charge to the Rules Committee, I went on testifying: "I will say very frankly that that was my reason, and I will tell the Committee why I had that reason. Sometime ago a cargo of men ordered to be deported abroad was brought on from the Pacific Coast to Ellis Island. The chairman of the immigration committee has referred to that before this

Committee—he did yesterday—to the fact as he stated it, and as it has been stated by others, that when these condemned anarchists or reds or I. W. W.'s or whatever they were, were brought to New York, to Ellis Island, the Department of Labor released a large number on their own recognizance, and thereby turned a lot of criminals loose in the city of New York who had been imported from Seattle, and other places perhaps on the Pacific Coast. And that was used by the newspapers, and it was not minimized by the committee charged with investigating these things; but the Department of Labor was held responsible for having released these guilty men on their own recognizance—turned them loose in New York, though they had been convicted. The fact in that case—I did not learn it until afterwards, but I knew it when I signed this order to 'let the Court decide'—the fact in this case was that *habeas corpus* writs had been procured in New York before a Federal judge, and the Federal judge called in the Assistant U. S. Attorney and the representative of the Department of Labor[1], and he said to them: 'I cannot but sustain these writs. If you do not cancel these proceedings, or if you do not do something to let these men free, I shall have to let them free.' And the Assistant District Attorney, or at any rate the representative of the De-

[1] In testifying that the Judge called in the representative of the Department of Labor along with the Assistant U. S. Attorney, I was in error. He called in the Assistant U. S. Attorney, and the latter repeated to the representative of the Department of Labor the substance of the Judge's communication as I gave it in my testimony.

partment of Labor, communicated with the Bureau, and through the Bureau with the Department, asking that, in order that the Judge might not set a precedent by discharging these men on *habeas corpus,* we should release them on their own recognizance. The Department released them on their own recognizance, and they became, a few months later, a butt for the attacks of these men who now denounce me for having refused to cancel a warrant under those circumstances. I said in effect, 'We have had one experience with cancelling warrants where the Court has intimated that he will sustain the warrants', meaning, of course, the writs of *habeas corpus;* 'this time let the Court decide. We have carried the bag once; we will not carry the same bag with the same cargo again.' And that is the reason I decided that case in the way I did—'Let the Court decide;' and the Court did decide. He ruled that our warrant was utterly without jurisdiction, and absolutely released the man—which would have been done in the other cases, about a year ago I think it was, when that great exploitation regarding them was made.''

At this point I was interrupted by Congressman Johnson of South Dakota—not Albert Johnson of Washington State, chairman of the immigration committee, who had been especially loud in denouncing the Department of Labor for the release in New York a year or so before—who courteously asked for the names of witnesses to the circumstances I was narrating—the circumstances that led to those releases in New York through the inti-

mation of the Judge. To the South Dakota Congressman's inquiry I replied, in the presence of the Rules Committee and as part of my hearing: "I can give you the name of the man—he is no longer in the Department—a perfectly reliable man; and if he says I am wrong about it I will yield myself to what he says. I do not know the facts myself; I was not there. But I do know that the thing was done. His name is Parker—A. W. Parker. If you will get A. W. Parker, whatever he tells you will be right, because he was there representing the Department. And I say in advance if Mr. Parker contradicts me in any respect in those particulars, I ask leave to withdraw the statement that I am making now to that extent. Mr. Parker knew about it and he is the only man that I know of that did distinctly know about it, representing our Department."

I discussed no other individual cases before the Rules Committee. It wasn't necessary. None of the others were worth discussing upon my initiative; and although the inquisition was open to all members of Congress, as well as to members of the Rules Committee, no other individual cases were brought to my attention. But a bunch of cases had been thrust into the bundle of miscellaneous charges. It was identified by the immigration subcommittee as "Cancellation of 38 Cases by Telegraph." The essence of that charge seemed to be that I was indifferent to the interests of the Government because I had cancelled warrants in the cases of a whole group of aliens arrested as an-

archists, "without awaiting the records of hearing in order to determine the nature of the evidence adduced to support the original charge."

Upon reading this accusation I was at first startled. Had I been asleep or in a trance when I wired that wholesale order? I had no recollection of ever having cancelled warrants by wire or otherwise without awaiting hearings. Upon reading the records in that bundle, however, I found facts which the immigration sub-committee, its sergeant at arms and the chairman of the whole committee had either incompetently overlooked or maliciously concealed—probably the former. The accusation proved to be as flimsy as a spider's web.

A request by the Immigration Commissioner at Boston, H. J. Skeffington, had been wired to the Department proposing release on their own recognizance of all the aliens in the group. Asked by wire for his reasons, Commissioner Skeffington replied by wire that the examining inspector and the agent of the Department of Justice were "satisfied that the warrants should be cancelled."

Commenting before the Rules Committee upon those telegrams and the rest of the record, all of which had been omitted from the sub-committee's report which constituted the impeachment specifications against me, but all of which I laid before the Rules Committee, I said: "Now observe that they were satisfied that the warrants should be cancelled. Presumably they had taken evidence. The record showed that they had taken evidence, for the evidence was furnished in the records weeks after

this telegraphic correspondence, and is here now. Then there came from the Bureau, prepared for my signature, a telegram which read as follows . . .: 'Your telegrams March 2 and 8. Release on their own recognizance all aliens concerned.' That was prepared for my signature by the Bureau of Immigration. I struck out the code word for 'release on their own recognizance' and inserted the code word for 'cancel,' in that telegram. I did not see then, and I do not see now, why men should be released on their own recognizance who had been brought before the Commissioner at Boston, the examing officer, and against whom no evidence had been produced, and with reference to whom both the examining officer and the representative of the Department of Justice were of the opinion that the warrants should be cancelled."

Having thus disposed of the startling charge that I had acquitted thirty-eight alleged anarchists without waiting for the evidence, I closed my testimony by reading extracts from a decision of one of the Circuit Courts of the United States, to which one of my counsel, Mr. Nesbit, had referred me. The case was "on all fours," as lawyers say, with the cases in which I had made the decisions for the making of which I was then threatened with impeachment for high crimes and misdemeanors.

Commenting as I read, I introduced the decision by calling the Rules Committee's attention to our Constitutional guarantees that "no *person* shall be deprived of life, liberty or property without due process of law," and that "excessive bail shall not

be required," and added: "Those quotations underlie the whole course of my proceeding in these matters on the basis of which it is proposed to impeach me before the Senate of the United States. They also underlie this decision I now call to your attention and hope the Committee, or members of it at least, will carefully read from beginning to end." Then I quoted clauses from the syllabus which stated that "an alien as well as a citizen, is protected by the universal principle that no person shall be deprived of life, liberty or property without due process, and his hearing must be in accord with the fundamental principles which inhere in due process of law;" that the "indispensable requisites" of an immigration-hearing "are that the course of proceeding shall be appropriate to the case and just to the party affected; that the accused shall be notified of the charge against him in time to meet it; that he shall have such opportunity to be heard that he may, if he chooses, cross-examine witnesses against him; that after all the evidence against him is produced and known to him, he may have time and opportunity to produce evidence and witnesses to refute it; that the decision or order shall be governed by and based upon the evidence at the hearing, and that only; and that it shall not be without substantial evidence taken at the hearing to support it;" that although the rule of the Secretary of Labor "be fair and just in appearance, yet if it is applied and administered by public authority with an evil eye and an oppressive hand, so as to deprive a person of his fundamental

rights, it is inconsistent with law and void;" that "the fixing by the inspector of the time when an alien may inspect the warrant, or the time when he may have counsel, so late as to deprive him of a substantial opportunity of the benefit of an inspection of the warrant and of the benefit of counsel, is an abuse of discretion which renders the hearing unfair."

As I was about to read an excerpt from the court's opinion in that impressively American decision, Mr. Garrett, one of the Committee, again interrupted me with a request to know, before I went farther, on what ground deportation was attempted in the case I was citing, and I replied: "They were prostitutes and men found in a house of prostitution—aliens found in a house of prostitution—who fell under the prostitution clause," which "is precisely the same in all other administrative respects as any of the other clauses."

Resuming then my presentation of the substance of the decision I was citing, I quoted at length from the opinion in the case, written by Judge Sanborn for the whole court of three judges[1] and with those quotations I concluded my direct statement to the Committee and informed the Chairman that I was "ready to try to answer any questions" that might be asked.

Some were asked by Mr. Garrett; they were courteous inquiries for pertinent information. Some were asked by Chairman Johnson of the im-

[1] Whitfield versus Hanges, 222 Federal Reporter, page 745.

migration committee; they were more humble in tone than Mr. Johnson's "silent speech" in Congress of a month before. Many were asked by the Chairman. Some were asked by Mr. Pou, who, when he got his answers, brought confusion into the Committee and crumpled up the original program by what he said, followed by what he did. This incident, however, will be more appropriate at a later stage in my story.

CHAPTER XXIX

ATTORNEY GENERAL PALMER ON THE DEFENSIVE

The Committee on Rules adjourned at the close of my testimony on the 8th of May, and until the 1st of June nothing came out of it relative to my impeachment. On that day there was what might be fairly characterized as an interlude. Attorney General Palmer appeared before the Committee.

He did not appear as a witness in the impeachment proceedings. He testified to no important fact within his own knowledge. All he did was to make a defensive speech.

His speech he read from manuscript prepared for him, except its literary and oratorical features, by the secret-service auxiliary of the Department of Justice. His reading occupied a two-days' session of the Committee.

When he finished, the Committee was addressed by Mr. Ralston, my leading counsel in the impeachment proceedings, who began:

"Mr. Chairman, I think, before the Attorney General goes, I ought to make one brief observation. It will take only three or four minutes, I think. On May 13——"

Congressman Pou here interrupted Mr. Ralston with a motion that the Committee go into executive session; whereupon the Chairman, addressing another member of the Committee about another

matter said: "We are going into executive session on your matter and on other matters here that must have action by this Committee in order to complete the work of the Congress."

Upon that announcement, Mr. Ralston explained his purpose. "I do not want," he said, "to disturb the plans of the Committee. I assume, then, that as soon as this evidence is printed I will have an opportunity to go over it and make suitable reply."

"Oh, undoubtedly," the Chairman assured him.

But Mr. Garrett interposed: "You will have an opportunity to go over it, but I do not know about the other."

Thereupon the Committee went hurriedly into executive session.

Mr. Garrett's significant doubt was subsequently confirmed. No opportunity was given my counsel to make any response to Mr. Palmer's speech.

I am inclined to believe that the Committee acted appropriately. Mr. Palmer's speech was in truth no part of the impeachment proceedings. Not only had he been invited by the Chairman in an informal and friendly way to appear, if he wished, merely to "refute" charges incidently made against his own Department, but the title page of the Committee's official record of his speech showed him as having appeared in his own case and not in mine.

Of the merits of his speech as distributed by him to the newspapers in advance, the New York World called it a "smoke screen."

The New York Evening Post said of it editorially:

> "If Attorney General Palmer had in hand any real defense against the charges brought against him he would not have required 30,000 words in which to set it forth. He has chosen to bury such defense of himself as he attempts to make in a labored and vicious attack upon Assistant Secretary Post that must long remain one of the curiosities of the Government archives. . . . The simple truth is that Louis F. Post deserves the gratitude of every American for his courageous and determined stand in behalf of our fundamental rights. It is too bad that in making this stand he found himself at cross-purposes with the Attorney General, but Mr. Palmer's complaint lies against the Constitution and not against Mr. Post."

CHAPTER XXX

COLLAPSE OF THE IMPEACHMENT PROCEEDINGS

The incident alluded to at the close of Chapter XXVIII is now appropriate. It occurred near the close of my testimony before the Rules Committee at my impeachment hearing, and the Committee's program was crumpled by it into an unrecognizable wad.

When upon closing my direct testimony I offered to answer questions freely, one of the prominent members of the Committee, Congressman Pou, a Democratic partisan of Mr. Palmer's whose attitude as a member of the Committee had been frankly hostile, surprised me with this question:

"Mr. Secretary, your political convictions have been represented in all sorts of ways, so that I believe I will give you an opportunity to say what your politics are, if you desire to do so."

"What do you mean by 'politics,' " I asked him; "party politics, or general political opinions?"

"Well, both," he replied.

While I had no desire to describe my politics, neither had I any objection. Therefore I explained quite fully. In the Committee's record of hearing my explanation covers about three pages; but Mr. Pou asked me several supplementary questions, the report of which with the replies occupies about three pages more. Immediately upon my reply to his

last question a colloquy occurred which I reproduce here from the Committee's record:

"*M. Pou:* I want to say, Mr. Secretary, that my feeling is that in what you have done, speaking for myself, I believe you have followed your sense of duty absolutely.

"*Mr. Post:* Well, I thank you, Mr. Pou, for that. You are the first man that has said that who comes from the opposite side, and I thank you for it.

"*Mr. Pou:* I don't admit that I am on the opposite side here.

"*Mr. Post:* Whose sympathies are on the opposite side. Let us put it that way.

"*Mr. Pou:* I am probably not in sympathy with some of your views; surely I am not; but in your administration of the office, whereas my decisions if I had been there might have been different, I feel that it is due to you, feeling that way about it, that I should say that, and I do say it with pleasure."

Almost before I could again thank Mr. Pou for thus emphasizing his frank and fair assurances, and acknowledge to him and the Committee, as I did, that I was "perfectly willing to concede that if there had been a tribunal of three men they would have disagreed frequently in these cases," he rose quietly from his chair and as quietly but deliberately walked out of the Committee room in the midst of the session.

For an appreciable interval the silence was impressive. The effect upon the Committee of what Mr. Pou had said and so significantly done seemed electrical. A reason was not far to seek nor dif-

ficult to find. It had been apparent for a considerable time that the Committee on Rules would not recommend impeachment. They could not. But faces must be saved, and the plans laid for saving faces involved in all probability, what the newspapers had forecasted, the subtitution for my impeachment of a resolution demanding my arbitrary dismissal from office. Inasmuch, however, as that course would have been suicidal without a unanimous report from the Committee recommending it, unanimity had been at least hoped for. This hope was shattered by Mr. Pou's words and the action with which he followed them. They were plain notice that no report from the Committee on Rules recommending to Congress a resolution demanding my removal by the President would be unanimous.

The collapse of the impeachment drive became then and there complete. No other course remained to the Committee, after providing an opportunity for the Attorney General to make his self-defensive speech—to which Mr. Pou was evidently not opposed, and there was no reason why he or anyone else should have been,—than to pigeon-hole the proceedings.

That is what it did. In no way has anything further occurred in Congress or any of its committees with reference, directly or indirectly, to Congressman Homer Hoch's impeachment resolution. With Congressman Pou's discouraging gesture the whole proceeding collapsed.

CHAPTER XXXI

AN AFTERPLAY

When the impeachment drama had been played to its anti-climax, the detective auxiliary of the Department of Justice staged an afterplay. It purported to be, but was not, an investigation by the American Legion, supplemented with what purported to be, but was not, the Legion's recommendation to President Wilson to dismiss the Assistant Secretary of Labor ignominiously from office.

Care had been taken not to present this recommendation to the annual convention of the Legion. There might have been discussion there. But immediately after the convention it was laid before the new executive committee of the Legion which directed the National Commander to "take all steps necessary to secure the dismissal of the said Louis F. Post at the earliest possible moment."

A special committee having been appointed by the National Commander in compliance with the directions of his executive committee, a statement bearing suspicious marks of composition in the secret-service division of the Department of Justice, was by this special committee laid before President Wilson. Through Secretary Tumulty the President referred the statement to the Secretary of Labor, who returned the following draft reply,

which was later given out at the White House by way of response:

> "Dear Sir: Replying to your letter of December 31st, relative to Louis F. Post, Assistant Secretary of Labor, I am in receipt of the following statement from Secretary of Labor Wilson: 'Louis F. Post is one of the truest Americans I have ever come in contact with. He is a thorough believer in democracy. He has no sympathy with an alien or American who believes in, advocates, or teaches the use of force to overthrow the Government of the United States. He has, however, a profound belief in and reverence for the Constitution of the United States, including the part that provides for its own amendment. He has, therefore, faithfully carried out the instructions given by me as Secretary of Labor concerning deportation cases. They are in substance as follows: (1). No person shall be arrested except upon sworn affidavit based upon information and belief. (2). No person when arrested shall be held incommunicado. (3). Every person arrested shall be entitled to counsel immediately upon being taken into custody. (4). They shall be confronted with the evidence, and shall be permitted to furnish testimony and be heard in their own behalf. (5). Excessive bail shall not be required. These safeguards of American liberty having been provided, if it is then shown by any evidence that any alien is deportable under the so-called anarchistic laws,

we will deport him with as little compunction as we would attack an invading enemy. We will not deport any one simply because he has been accused or because he is suspected of being a Red. We have no authority to do so under the law. No two men, even though they may have the same general viewpoint, can examine the same set of facts and give the same weight to each item. Consequently, in that class of cases that constitute the twilight zone, they might come to entirely different decisions. Mr. Post has faithfully carried out these instructions, and I am satisfied ranks amongst the ablest and best administrative officers in the Government service.' "

Secretary Wilson's letter for the President and its publication from the White House, dropped the curtain on the Legion faction's afterplay.

CHAPTER XXXII

THE SALSEDO HOMICIDE

Several episodes of special interest attracted public attention during the deportations delirium. The most startling was the Salsedo homicide. It came to my attention through newspaper reports on the day on which I began testifying in the impeachment proceedings before the Rules Committee of the House of Representatives. According to those reports an alien of the name of Andrae Salsedo had jumped to the street from a window high up in a building on Park Row, New York City, where he was in close custody as an alien charged with a deportable offense.

Knowing that the Department of Labor occupied no building there, I at first supposed that the tragedy did not involve the administration of this Department. Yet as one of the newspaper reports stated that at the time of his death Salsedo was in custody under a warrant of the Department of Labor, I sent to the Bureau of Immigration for any file we might have affecting any alien of the name of Salsedo. Realizing from the file that came to me then that Salsedo's imprisonment as a deportable alien, if it had nothing else to justfy it, was lawless, I telegraphed to Ellis Island for the record in Salsedo's immigration hearing. The reply explained that Andrae Salsedo had never been in the

custody of the immigration authorities. Subsequently it appear that the Secretary's warrant of arrest had been issued by myself. It was addressed "to the Acting Commissioner of Immigration, Ellis Island," New York Harbor, "or to any immigrant inspector in the service of the United States," and required the official executing it to grant his prisoner a hearing—that is, to take him to an immigrant station where he could be examined and could defend himself according to law before a duly authorized examining immigrant inspector. Under that warrant, if strictly considered, no one but an immigrant official had any authority to arrest Salsedo. Yet his arrest by some other official, or even by an unofficial person, could not have been seriously objected to if the person making the arrest had delivered him without delay to the immigration authorities. But this was not done. From the hour of his arrest to the moment of his death, Salsedo was in the custody, all unknown to the Department of Labor, of Department of Justice detectives.

Consequently this lawlessly imprisoned alien was given no hearing such as the law required and the warrant of arrest commanded. There was an attempt to make it appear that a lawful hearing had been given him, but that attempt was absurd. The hearing required by the law and commanded by the warrant of arrest was an examination with opportunity to defend before a duly authorized immigrant inspector, not a secret inquisition by Department of Justice detectives such as Salsedo received.

An explanation of Salsedo's captivity has been

adopted by ex-Attorney General Palmer, whose secret service agents were responsible for it. According to this explanation Salsedo was detained, along with one Robert Elia, in the Park Row building from which Salsedo's body tumbled, these two prisoners and their lawyer consenting to the detention. "Subsequent to the issuance and before service of the warrants could have been effected," Mr. Palmer explained, "Salsedo and Elia disclosed some very important information in connection with the bomb plot of June 2, 1919, and with their consent and the consent of their attorneys they remained in the Department of Justice building in New York City until the information furnished by them could be verified and other persons interested in the bomb plot could be located." The "important information" referred to by Mr. Palmer is still a secret. The warrants which, according to his secondhand statement, had been issued but were not yet served, were issued in February and early March and were in the hands of the Department of Justice for execution from that time until May, both prisoners being meanwhile in the custody of Department of Justice agents. And although Mr. Palmer loyally accepted the explanation of his secret-service advisers that the prisoners were in custody by their own consent "subsequent to the issuance and before the service" of the Department of Labor warrants, it is documentarily evident that his advisers themselves were not mentally at ease over this novelty of imprisonment by consent. Note the circumstances. Both Salsedo and Elia were still in the

custody of Mr. Palmer's detectives when the Salsedo homicide occurred, which was two months after the detectives received the warrants of arrest. Both were held by them in secret custody until the homicide. No steps were taken meanwhile toward bringing the prisoners to an immigrant station for lawful custody and the requisite legal hearing. But no sooner had the Salsedo homicide occurred than those same Department of Justice detectives hustled Elia out of their custody and into the custody of the immigrant officials at Ellis Island. This spasmodic delivery of Elia to his lawful custodians is not easily reconcilable with a whole-hearted acceptance of the theory that for the preceding two months he and Salsedo had been prisoners by consent—even if that kind of imprisonment were not a legal novelty. And the pretense of the Department of Justice agents, for which Mr. Palmer became sponsor to the public, and which has gone the way of all the other thrilling pretenses of secret-service agents about those bomb plots, is hardly consistent with the refusal of the Department of Justice to co-operate with State officials in prosecuting Elia, nor for its urgency in demanding his speedy deportation.

That the long detention of Salsedo and Elia by secret agents of the Department of Justice in their building in New York was a gross violation of law, or at the least a gross abuse of authority under the law, is clear enough. Whether or not this lawlessness was accompanied with "third degree" cruelties culminating in Salsedo's dramatic death, is

something which only the detectives who had him in their custody could reveal; and no scrutinizing investigation appears to have been made, either by Federal or by State authority. Nothing is clear about that homicide except that Salsedo was lawlessly a prisoner, that he was held incommunicado in a secret prison controlled by detectives of the Department of Justice, that this prison was fourteen stories above the street, and that his body struck the pavement with an impact that turned it to pulp.

CHAPTER XXXIII

CASE OF THE RUSSIAN AMBASSADOR

Complaints of "third degree" maltreatment of aliens arrested for deportation by Department of Justice detectives were not infrequent, as this story in its course has occasionally indicated. Some of these complaints came to the Department of Labor through regular immigration hearings. They did not lack probability, but the secret-service agents of the Department of Justice denied the accusations, as secret-service detectives always do. One reported victim of these outrages was the private secretary of Ludwig C. A. K. Martens, whose maltreatment as whispered about was peculiarly malignant and abhorrent. There was reason to anticipate similar treatment of Mr. Martens himself were he to fall into the hands of the secret-service auxiliary of the Department of Justice; and there was a certainty, judged by the spectacular performances of that industrious and ingenious group with reference to Mr. Martens during the winter of 1920, that he would be made the subject of humiliating newspaper publicity. His subsequent experience is another important episode of the deportations delirium with which my narrative is concerned.

Mr. Martens had been appointed by the soviet government of Russia as its ambassador to the

United States, to take the place of Boris Bakmetieff, who had been recognized by the United States as ambassador from the Kerensky government of Russia, which had displaced the government of the Czars, and in October, 1917, had given way to the government of the soviets. But our Department of State refused to recognize Mr. Martens. It continued to recognize Mr. Bakmetieff until the summer of 1922. Its refusal to recognize Mr. Martens rested upon no personal objection, so far at least as publicly appeared, but was attributed solely to the fact that his official reception would have acknowledged international relations with the *de facto* government of Russia. Mr. Martens thereupon established himself at New York as the agent in this country of the Russian government which had sent him here as its ambassador.

Whether or not his activities were in fact legitimate, they did not prove to have been illegitimate to the extent of illegality. Had such proof been available, Mr. Martens would surely have been prosecuted in New York where his headquarters were and where he was pursued by vigilant and weariless and resourceful agents of powerful business and political interests that were hostile to Russia. Nor even to the extent of bringing him within any of the proscriptions of our deportation laws, did his activities prove to have been illegitimate. After an extended hearing in the Department of Labor upon a warrant of arrest charging deportation culpabilities of all probable kinds—a hearing conducted by an immigrant inspector recom-

mended by the Department of Justice for his special qualifications, a hearing that was prolonged over several months by adjournments solicited by the Department of Justice for the purpose of piecing out testimony—not a shred of proof of any deportable conduct of a personal kind by Mr. Martens was produced.

As the decision in his case was made by the Secretary of Labor in person, the pertinence of the case to my narrative is related less to the decision than to the prior proceedings. It will be enough here to say of my own connection with the decision, that I participated in an advisory capacity at and after the hearing and agreed with the Secretary in his conclusion. The anterior proceedings, however, are distinctly pertinent to my story.

Upon arriving at my office on the morning of the first business day of the year 1920, I found upon my desk a file containing an elaborate brief from the office of the Attorney General in support of an application by the secret-service division of the Department of Justice for a warrant of arrest for Mr. Martens. The cause proposed for the arrest was, as I remember, membership in the Communist Party of Russia. I had finished reading the brief when the Commissioner General of Immigration, Mr. Caminetti, came into my office to confer with me about it. At the conclusion of our conference I told him that if the matter were submitted to me in the absence of the Secretary of Labor, I should give instructions to issue a warrant if the proposed grounds of arrest were properly

brought within the deportations law, but would prohibit and prevent any spectacular arrest. I also alluded to the fact that Great Britain was according polite treatment to the Russian ambassador to that government, whereas we were being importuned to treat the one to ours with indignities; and in connection with this allusion I said I should hesitate to issue a warrant for Mr. Martens, even if probable cause were shown, without consulting the Secretary of State. Mr. Caminetti suggested that I confer with Mr. Abercrombie, the Solicitor, who was then acting for the Secretary of Labor in immigration matters. He explained that Mr. Abercrombie had already conferred with the Secretary of State. So I called in Mr. Abercrombie, who told me that the Secretary of State had in person assured him that the arrest of Mr. Martens for deportation would not embarrass the State Department. Upon this assurance I reminded Mr. Abercrombie that he was for the time in charge of immigration duties for the Secretary of Labor and assured him that I would not interfere unless in response to his request for instructions in the Secretary's absence; but that if I were called upon for instructions I would direct that a warrant of arrest issue for Mr. Martens, if probable cause for deportation under the law were properly proved, but would forbid its execution under circumstances calculated to serve sensational purposes. To this Mr. Abercrombie replied that perhaps I had better return the file without instructions, and I did so. My understanding of his motive in making

this suggestion was then and still is that a request from him for instructions might seem like thrusting upon me a responsibility which he felt he ought to bear himself.

I heard nothing further about the matter for more than two months. Meanwhile Mr. Martens came to Washington to testify before a committee of the Senate. Prior to appearing before this committee and being paroled by it, as he was when he appeared, he kept his whereabouts in Washington a secret, apparently to avoid humiliating arrest by Department of Justice detectives. Through their publicity agency they were filling the newspapers with stories of the audacious things they would do to Martens as soon as they could lay hands on him. This pursuit necessarily ceased when Martens appeared formally before the Senate committee and received the protection of its parole pending his examination as one of its witnesses.

Although the sensational reports of attempts to arrest Mr. Martens indicated that the arrest was to be by authority of a Department of Labor warrant, I gave no official attention to the subject because I was not then acting for the Secretary of Labor in immigration matters, the Solicitor being still in charge of this phase of the Department's work. But soon after the Solicitor's temporary withdrawal from the Department, in consequence of which the immigration work came under my immediate supervision, my official private secretary, Mr. Reid, informed me that he had learned that at the expiration of the Senate committee's parole,

Martens was to be arrested in a sensational manner by Department of Justice detectives under a Department of Labor warrant. According to Mr. Reid's further information, three or four of these detectives were to make a conspicuous seizure of Martens in a public place staged for the tableau. Photographs for newspapers were to be taken on the spot, moving picture cameras were to be at hand and at work, and telegraphic material for full-page headlines was to go out to the press of the continent. Mr. Reid's sources of information were such that no room for doubt remained.

What was to be done with Martens after the arrest can only be inferred from what was credibly alleged to have been done to some aliens arrested on Department of Labor warrants by Department of Justice detectives. Taken to secret places instead of immigration stations—to secret places under the permanent or temporary control of the Department of Justice—they afterward complained of having been there subjected to various grades of the "third degree," from gruelling cross-examinations to nameless physical torture.

Regardless, however, of what was to be done with Mr. Martens after his arrest, my information as to the arrest itself indicated that it was to be a species of public entertainment for which the Department of Labor could not decently allow itself to be responsible. I therefore took steps to frustrate, not the arrest, but an abusive, lawless, indecent and scandalous method of making it.

Having first assured myself that a Labor-De-

partment warrant of arrest was actually in the hands of Department of Justice detectives, I ordered its withdrawal from them and its transmittal to me. This order having been obeyed, I arranged to have the warrant of arrest executed decently by an immigration officer. Communicating then with the senior counsel for Mr. Martens who had in charge his case before the Senate committee—ex-Senator Hardwick of Georgia, soon afterwards elected Governor of his State— I indicated to him that if Mr. Martens were arrested by the Department of Labor upon his release by the Senate committee, a suggestion for paroling him to his counsel pending his hearing would be favorably considered. Meanwhile I arranged with Senator Moses, chairman of the Senate committee which then held Mr. Martens under parole, to notify me long enough in advance of Mr. Martens's release to enable me to make concurrently a decent arrest—an arrangement which Senator Moses entered into with an expression of his agreement with my view of the decencies involved. In due time he notified me that his committee would release Mr. Martens within a few hours; and almost at the same moment ex-Senator Hardwick informed me that he would come to my office with his client at such hour as I might set for the preliminaries of a parole to the Department of Labor. I therefore made no attempt at arrest until Mr. Martens and his counsel arrived.

Strictly according to his promise, ex-Senator Hardwick brought Mr. Martens to my office. When

they arrived I made the arrest myself in legal form under the Department of Labor warrant which I had kept in my possession ever since withdrawing it from the Department of Justice; and, having made the arrest, I forthwith heard and granted Mr. Hardwick's application for parole of his client to himself pending decision of the case. The terms of the parole required Mr. Hardwick to produce Mr. Martens at any time in the future upon demand of the Secretary of Labor.

When that preliminary arrangement had been made, I directed Inspector A. P. Schell, as examining inspector, to take charge of the regular immigration-office hearing, instructing him to proceed in every respect in the usual manner under the immigration law and the Departmental rules of procedure. Mr. Schell was then unknown to me either personally or by reputation, although he had been responsibly connected for many years with the immigration service. I selected him because I had seen in the Martens record a request by the Attorney General for his appointment as examining inspector in the Martens case on the ground that he was especially well qualified for the kind of investigation which that case required. It is due the Attorney General's advisers to say that their judgment in that instance turned out to be a sound one, and to Mr. Schell that he proved to be a thoroughly competent and fair-minded examining inspector.

When the record in the Martens case came back to the Department several months later, I referred

it to the Secretary of Labor for his decision in person on the merits, he having then fully resumed his official functions. A lengthy argumentative hearing was accorded by Secretary Wilson, at which three counsel for Mr. Martens (Hardwick, Hourwich and Recht) and three for the Attorney General, (Hoover, Stone and Grimes) had ample opportunity to present every phase of the case. Considered as a case against a dangerous "red", such as Mr. Martens had for months been paraded in inspired newspaper stories as being, the presentation against him was frivolous. If he had not been an official of the unrecognized government of Russia, he could not have been deported under any law of ours.

In an extended opinion, Secretary Wilson explained that although Mr. Martens was not proved to have done anything unlawful as an individual, yet as he was an official of the Soviet Government of Russia, which was conducting a propaganda in the United States for the purpose of creating an insurrection to overthrow the Government of the United States by force and violence, he was "a member of or affiliated with an organization that entertained a belief in, taught, or advocated the overthrow by force or violence of the Government of the United States;" and that this fact, taken in conjunction with his expressed belief in and approval of the Third International, also proved, appeared to demonstrate that Mr. Martens "believed in the overthrow by force or violence of the Government of the United States."

It was those inferences, and those alone, that either necessitated or permitted the deportation of Mr. Martens. But as they did necessitate it, Secretary Wilson decided, correctly in my opinion, that Mr. Martens must be deported from the United States to Russia.

Supplementary to that decision, however, Secretary Wilson permitted Mr. Martens to return to Russia voluntarily at his own expense; and upon receiving proof of his actual arrival in Russia, ordered cancellation of the warrant of arrest.

This concession was fully justified upon grounds of public policy. Had Mr. Martens been forcibly deported, he could never lawfully have returned to this country. No matter what the circumstances, he would upon returning have been subject to prosecution and imprisonment for felony, supplemented with deportation anew. In the event, therefore, of a reversal by the then incoming Presidential administration of the policy of its predecessor regarding the relations of the United States with Russia, the status of Mr. Martens as an ambassador who had been ignominiously expelled from the United States and as therefore incompetent to enter it again even officially (the cause of his expulsion being his official status in that very Government) might give rise to diplomatic embarrassments in the practical adjustment of relations between the two countries. Those were Secretary Wilson's reasons for cancelling the warrant of arrest after Mr. Martens had voluntarily returned to Russia. There was no warrant of deportation.

CHAPTER XXXIV

LAWLESS MEDDLING WITH THE MAIL

Another notable episode of the deportations delirium had to do with lawless violations of the sanctity of the United States mail. Detectives of the Department of Justice were discovered to be interfering, without the least shadow of lawful authority, with the postal rights of aliens held at Ellis Island for deportation.

Complaints of this unlawful censorship had come to me, but not officially nor in substance or form sufficient to warrant official action. They disturbed me, however, and I requested the Solicitor of the Department (Rowland B. Mahany at that time) to make informal and judicious inquiries.

Not long afterwards I received from Frederick A. Wallis, the Commissioner of Immigration then at Ellis Island, an official letter in which he asked for instructions regarding the opening and censoring by agents of the Department of Justice of letters to and from aliens in his custody. This letter I referred to Solicitor Mahany with an official request for legal advice on the subject. Informing me in response that there was no legal authority for censoring Ellis Island mail except such as the Department of Labor might have as custodian of Government territory used as a place of detention, he advised, quite in harmony with my own judg-

ment, that inasmuch as letters are not in the mail until actually in the possession of the Post Office, and are out of the mail upon delivery at their respective destinations, the censorship authority of the Department of Labor might be regarded as similar to the limited authority in that respect which State officials exercise in prisons. Thereupon I requested the Solicitor to proceed in the matter as Acting Secretary, and he did so.

Upon investigation he learned that the mail of aliens held at Ellis Island for deportation under Department of Labor warrants had been habitually censored by an employee of the Department of Justice attached to New York headquarters of that Department's Bureau of Investigation—its detective bureau or division. This detective visited Ellis Island regularly for that purpose. Among those who complained of his practice was a lawyer who stated that confidential communications from a client were being examined and sometimes confiscated. Another instance involved a letter from an imprisoned alien at Ellis Island to the Department of Labor.

No employee of the Department of Labor had been authorized to exercise any such supervision, and, so far as appeared, none had attempted to do so. Commissioner Wallis had impatiently tolerated it on the part of the agent of the Department of Justice under an impression—a reasonable impression in the circumstances—that the Department of Justice was acting by lawful administrative authority. In fact, however, there not only was no

law to authorize the conduct of the Department of Justice agent, but the Department of Labor, from which alone any authorization to censor prisoners' correspondence could lawfully come, had never given him or his Department the slightest token or color of permission.

An examination of Department of Labor files disclosed no information as to the origin of the practice; nor did they furnish evidence of so much as a request from the Department of Justice for permission to pursue its inquisitorial handling of mail matter. The whole procedure was an unwarranted usurpation of authority by irresponsible detectives.

When he had satisfied himself as to the facts, Mr. Mahany as Acting Secretary, put an end peremptorily to this phase of the reckless "red" crusade of the Department of Justice and its group of private detectives publicly employed, by issuing specific instructions to Commissioner Wallis, which Mr. Wallis was not at all disturbed at receiving nor reluctant to obey, and which were in these terms: "It is the policy of the Department not to permit a continuance of such censorship by any person or official outside its own jurisdiction" and "all censorship" must "be restricted to an irreducible minimum even when exercised under your own personal control or that of a trusted official especially selected by you to exercise this War function, and for the legal period of the War only. I need not point out to you that any tampering with the privacy of mails, however advisable

it may seem as a War measure, has a tendency to familiarize officials with the idea and thus indirectly argue in their minds for the continuance of the practice in times of peace. The sacredness of the mails is one of the great pillars of civil liberty comparable to and coequal with the sanctity of the private dwelling. Encroachment upon either right is to the degree of the encroachment destructive of civilization itself, and cannot lightly be permitted. Only the gravest considerations of national danger will justify the opening of a single letter. Under no circumstances are letters to be molested while in the jurisdiction of the postal authorities. You are therefore directed to abolish at once outside censorship of the mails at Ellis Island, and to conduct such censorship as you may deem advisable, in accordance with the considerations above set forth."

CHAPTER XXXV

INDICTMENT OF THE DEPARTMENT OF JUSTICE BY DISTINGUISHED AMERICAN LAWYERS

Among the extraordinary episodes of the deportations delirum, the most important in character and effect was the publication of a vigorous indictment of the Department of Justice by a voluntary jury of twelve high grade lawyers. This indictment was based upon the personal rights clauses of the American Constitution, which it charged the Department of Justice with violating.

The lawyers who composed that unconventional jury were twelve in number. The chief member of the group was Roscoe Pound, dean of the Law School at Harvard University, and a man who for his professional attainments and abilities was already famous in the legal fraternity throughout the United States. Dean Pound was supported by Zechariah Chafee, Jr., also a professor at the Harvard Law School and now further distinguished as the author of a highly important American law book,[1] and by Felix Frankfurter, Harvard professor of administrative law. The Middle West was represented in the group by Ernst Freund, professor of jurisprudence and public law at the Uni-

[1] Freedom of Speech. By Zechariah Chafee, Jr., Professor of Law in Harvard University. "Give your mind sea room." New York: Harcourt, Brace and Howe, 1920.

versity of Chicago, and Tyrrell Williams, a professor in the Law School of the Washington University at St. Louis. Frank P. Walsh of Kansas City, New York City and Washington, D. C., a legal practitioner of national eminence, was also one of the group, as were Swinburne Hale of New York City, David Wallerstein of Philadelphia and R. Gratz Brown of Memphis. Baltimore was represented by ex-Judge Alfred S. Niles, and Washington, D. C., by Jackson H. Ralston. The distinguished ex-United States Attorney for the Eastern District of Pennsylvania, Francis Fisher Kane, completed the group.

This voluntary jury of high-grade lawyers, some of national and all of local distinction in their profession, had been impaneled by the National Popular Government League, a non-partisan body organized nationally with headquarters at Washington long before the World War, and which from the beginning has been served by Judson King as its executive secretary. Its controlling purpose has all along been to promote legislative measures tending to a further democratization of the political mechanism of the American republic. When we entered the War some of our War-legislation excited alarm in the League lest it become permanent after the War need for it should have passed away. This alarm seemed to be in great degree justified by peace-time sedition bills introduced in Congress under the influence of the Department of Justice, the administration of which, if they became law, as

fortunately they did not, might very easily have subjected public printing and speaking to a censorship as repressive as that which prevailed in Russia under the Czars. The National Popular Government League therefore concluded that its policy of advancing the principles of popular government to higher levels of democracy must for a time give way to, or at least be fortified with, a policy of actively defending the levels of popular government already achieved and for which the American Constitution is our written guarantee. The necessity for such a policy was emphasized by the autocratic conduct of the Department of Justice in its "red" crusade.

True, then, to the American ideals for the promotion and preservation of which the League had been organized years before and for which it existed, this organization assembled twenty of its officers and members to consider the threatening situation and to recommend a policy. By that conference the League was advised to publish widely a responsible report upon the methods of Attorney General Palmer in his "red" crusade, and in consequence of that advice the lawyers' indictment of the Department of Justice for crimes against Americanism was secured and published by the League. It had a wide circulation and produced a profound impression.

Although this indictment covers 67 printed pages, the text occupies but seven. The remainder of the pamphlet is composed of exhibits of which

there are thirty-one.[1] The entire document was addressed to the American people.

It classifies in six counts the illegal acts with which it charged the Department of Justice and of which it offered proof in its thirty-one appended exhibits. The six counts were enumerated in this order:

First Count.—Cruel and unusual punishments contrary to the Eighth Amendment of the American Constitution, namely, third-degree tortures.

Second Count.—Arrests without warrant, contrary to the Fourth Amendment of the Constitution, namely, raids upon public meetings.

Third Count.—Unreasonable searches and seizures contrary to the Fourth Amendment of the Constitution.

Fourth Count.—Use of provocative agents, such as were familiar in old Russia and Spain, who have brought about meetings in order to make wholesale arrests thereat.

Fifth Count.—Compelling persons to be witnesses against themselves, contrary to the Fifth Amendment of the Constitution.

Sixth Count.—Misuse of his office by the Attorney General, and deliberate squandering by him of public funds, by going into the field of propaganda instead of confining his activities to advising the Government on questions of law, and prosecuting persons who violate Federal statutes.

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[1] Copies of this document may be had of the National Popular Government League, Judson King, Executive Secretary, Munsey Building, Washington, D. C.

This indictment of the Department of Justice by the group of distinguished lawyers named above and whose signatures were attached to it, closed with these pregnant words: "It has always been the proud boast of America that this is a government of laws and not of men. Our Constitution and laws have been based upon the simple elements of human nature. Free men cannot be driven and repressed; they must be led. Free men respect justice and follow truth, but arbitrary power they will oppose until the end of time. There is no danger of revolution so great as that created by suppression, by ruthlessness, and by deliberate violation of the simple rules of American law and American decency. It is a fallacy to suppose that, any more than in the past, any servant of the people can safely arrogate to himself unlimited authority. To proceed upon such a supposition is to deny the fundamental American theory of the consent of the governed. Here is no question of a vague and threatened menace, but a present assault upon the most sacred principles of our Constitutional liberty."

CHAPTER XXXVI

THE DEPARTMENT OF JUSTICE AT THE BAR OF THE SENATE

Through Senator Thomas J. Walsh of Montana, a Constitutional lawyer of high national repute, the Lawyers' Indictment of the Department of Justice, told of in the preceding Chapter, came before the Senate of the United States. Being there referred to the Senate Committee on the Judiciary, its accusations were brought to a hearing. For the purpose of conducting this hearing the Judiciary Committee created a sub-committee consisting of Senators Thomas Sterling of South Dakota, William E. Borah of Idaho, Le Baron B. Colt of Rhode Island, Thomas J. Walsh of Montana and William H. King of Utah. Two of these Senators were party Democrats—Walsh and King. The other three were Republicans. At the sub-committee hearings the principal participants were Senators Sterling (chairman of the sub-committee), Senator Walsh and Senator King. Beginning on the 19th of January, 1921, the hearings ended on the 3d of March following.

For more than a year after the hearings had ended, the chairman of the sub-committee, Senator Sterling, took no steps to bring the proceedings of the inquiry or its results to the attention of the main committee, the Judiciary Committee, so that the testimony might be laid before the Senate along

with a committee report. Meanwhile Senator Walsh, his requests for sub-committee action ignored by the chairman, prepared a report which he brought before the main committee, at the same time making a motion to discharge the sub-committee. The sub-committee was accordingly discharged by the main committee; but the sub-committee chairman, Senator Sterling, was given time, at his own solicitation, to prepare a report for the sub-committee as a substitute for that proposed by Senator Walsh. When Senator Sterling presented his proposed sub-committee report, Senator Walsh submitted a supplementary report by way of reply.

The subject matter of those three reports reposed undisturbed, along with the reports, in the pigeonholes of the Senate Committee on Judiciary of the Senate until February 5, 1923,—over two years after the sub-committee hearings began and one year and eleven months after they were closed —when Senator Walsh forced the matter upon the attention of the Senate.

From the Congressional Record of February 5, 1923, at page 3051, it appears that the Judiciary Committee of the Senate had refused to adopt the Walsh report as the report of the Committee, the motion to adopt it being defeated by the votes of Senators Dillingham, Sterling, Ernst, Shortridge, Overman, Shields and Nelson, against those of Senators Walsh, Norris, Ashurst and Borah. Thereupon the Committee resolved to make upon the subject no report at all. Consequently Senator Walsh asked in open session of the Senate that all the re-

ports submitted to the Judiciary Committee be printed in the Congressional Record and that the Judiciary Committee be discharged from further consideration of the subject. There being no objection, the Committee was accordingly discharged and the reports were printed in full in the Record of February 5, 1923, between page 3051 and page 3073.

Those reports as there printed make interesting reading. They consist, as indicated above, of Senator Walsh's proposed sub-committee report, of Senator Sterling's proposed sub-committee report, and of Senator Walsh's report in reply. The last concludes with a stirring appeal to the true principles of Americanism. Referring to the excuse for official lawlessness, which the Attorney General advanced and Senator Sterling adopted, that feeling had run high on account of a "general apprehension of the spread of bolshevism, because of the dastardly bomb outrages and the activities generally of the 'reds,' " Senator Walsh's proposed but buried report replied: "It is only in such times that the guarantees of the Constitution as to personal rights are of any practical value. In seasons of calm, no one thinks of denying them; they are accorded as a matter of course. It is rare, except when the public mind is stirred by some overwhelming catastrophe, or is aghast at some hideous crime, or otherwise overwrought, that one is required to appeal to his Constitutional rights. If in such times the Constitution is not a shield, the encomiums which statesmen and jurists have paid it are fustian."

CHAPTER XXXVII

SUMMARY AND CONCLUSION

The most important facts of a portentous fragment of American history are assembled in the foregoing personal narrative of a peculiar official experience. Following immediately upon the close of the World War, a popular delirium spread over the United States. It expressed itself in frenzied demands for deportations of alien residents. It rose to its peak in 1920. This delirium derived its distinctive characteristic from reports of mysterious crimes attributed to aliens. With nerves unstrung, the public easily saw anarchy spooks in every shadow. A postal explosives incident of the year before, closely followed by a hideous bombing of private residences, including the Washington home of the Attorney General, excited terrifying suspicions. Although the origin of those crimes has never been fixed, nor even indicated with reasonable probability, the crimes themselves were outstanding facts and stimulants of fear.

Were it asked why the delirium concentrated upon alien deportations, the answer that there is never a "why" for a delirious impulse might satisfy but it would not be the best. A better is indicated by the fact that bombing crimes, real and imaginary alike, were associated in American thought with alien "reds." The "red" epithet

had been suggested by the color of the flag of socialistic internationalism. Intended originally to symbolize world brotherhood, a hint from the Apostolic declaration—"of one blood all nations of men,"—this flag had been interpreted by hostile opinion, not as a declaration of blood unity but as a threat of blood sacrifice. That sinister interpretation was reinforced in the United States with a bitterly patriotic aversion to the red flag as an alien menace to the red-white-and-blue. These mental associations of "reds" with foreigners, and of "red" foreigners with destructive conspiracies, were intensified by sensational reports of revolutionary horrors in Soviet Russia where the "red" flag waved. Color hatreds sometimes cut strange capers, not only in bull pastures but also in political regimes. Thomas Jefferson was a "red" to Federalists early in our national history, and Abraham Lincoln was a "black" to pro-slavery Democrats sixty years later.

A further reason for the concentration of our recent national delirium upon alien deportations, lay in the prejudice against immigrants which had been in process of cultivation here for nearly forty years. It was essentially very much like the bitter anti-Irish prejudice of our Knownothing period. There was this important circumstantial difference, however, that in the Knownothing period foreigners could not be penalized without a judicial trial, such as citizens were Constitutionally guaranteed, whereas at the period of this delirium a process

of arbitrary deportation by Executive authority had been established.

With suspicions of bomb-throwing thus centered upon aliens, and with arbitrary deportations of resident aliens by administrative process as a ready method of penalization, the force of the delirium turned in the direction of a deportations crusade with the spontaneity of water flowing along the course of least resistance.

Doubtless, too, this delirium was accelerated by a war frenzy which survived the World War. War gets on the nerves of a people. It breeds popular hysteria as naturally as excessive whiskey-drinking breeds imaginary monsters. The proof of this which the aftermaths of all wars afford, has been overwhelmingly confirmed by the wild behavior of nations in Europe following the World War. Is it then to be wondered at that the people of the United States, though habitually inclined to boast of their poise, also fell victims to one of these after-war deliriums?

In stimulating the American delirium, a conspicuous agency was the Department of Justice, one of the Executive departments of the Federal Government—not, however, in its regular and legitimate organization, nor under the regime of Attorney General Gregory, but through a private-detective adjunct which Attorney General Palmer attached to it. Public money appropriated by Congress for "the detection and prosecution of crimes against the United States" was lavishly used by this detective adjunct of that Department

as if the detection and prosecution of crime were legally synonymous with the detection and deportation of unwelcome aliens. The two functions are different in law from the ground up. But that irregularity was trivial in comparison with the anti-American spirit and the lawless procedure with which those detectives carried on the deportations crusade.

Comparing their victims to "moral rats" menacing the community—a denunciation they were able to verify in but few instances, and too feebly in nearly every one for any kind of criminal prosetion,—those detectives indulged the mischievous notion that in catching their "moral rats" the effectiveness of the traps was more important than their lawful construction. It was a new version of the long-ago discarded rule that "the end justifies the means"—new in this, that it regarded the end itself as needing no justification.

So detectives of the Department of Justice ruthlessly invaded peaceable homes, in the small hours of the morning, without warrants but upon a pretense of imminent danger to the community, and arresting inmates in their beds, searched their rooms, seized lawful private property, and hurried their prisoners to police stations where, before the sun had risen, they subjected them to "third degree" examinations in efforts to discover evidence of a guilt that apparently did not exist. So, also, those detectives made sweeping arrests of whole audiences at public meetings, rounding up citizens and aliens without discrimination, and standing

them against meeting-room walls, searched them threateningly after the manner of highwaymen robbing groups of travellers. After the search they usually turned citizens loose, but the aliens they marched off to prison, and at least once conspicuously in manacles and chains. They jailed crowds of these prisoners in quarters so close, and held them there so long, that Nature protested with sickening odors. They kept prisoners incommunicado, old Spanish fashion, for days at a stretch, lawlessly intercepting their letters in the mail, depriving them of the help of friends and the services of lawyers, placing them beyond the reach of writs of *habeas corpus,* and hiding them so that their families were in distress from ignorance and fear. All that and more like it, or worse, the secret-service agents of the Department of Justice, recruited from private detective agencies, did with scornful indifference to the personal liberty clauses of the American Constitution. To know the story is to recall the revolting secret-police operations of Germany and Russia before the World War had abolished kaisers and czars.

And the victims, those "moral rats," what were their offenses? Were they criminals? In almost every instance, No. Had crime been the accusation, there would have been no excuse for releasing citizens; crime by a citizen is not less criminal than crime by an alien. The accusations related only to conduct which, under our deportation laws, terminates the residential rights of aliens and authorizes their deportation by mere administrative process.

Nothing but membership in an organization of a proscribed class—a membership the significance of which might be unknown to the accused person and in most instances was in fact unknown to him, a membership in which citizens might participate without question—was the dangerous conduct charged against nearly all the "moral rats" caught in those lawless traps of that "red" crusade.

Some of the proscribed organizations were finally found to be lawful with reference to aliens no less than to citizens. About them all there was as to their lawfulness disagreement between Federal courts. Yet unsophisticated and well-disposed foreigners who for some reason, usually a legitimate one, had become members of one or another of those organizations, were lawlessly arrested and imprisoned. Many were not even nominal members, while many more had been transferred without their knowledge to unlawful organizations by organizations conceded to be lawful.

The records of accusation and evidence for which the Department of Justice made itself responsible through its secret-service auxiliary, and which are now in the files of the Bureau of Immigration by the thousands, would disgrace the judgment of any lawyer who dared cite them in vindication of the epidemic of arrests to which they relate. Only slightly more than a third of all the aliens arrested were legally deportable upon the evidence submitted. Nor could many of these have been legally deported but for their own admissions of unpopular opinions or of membership in proscribed

organizations supposed by them to be lawfully educational or social. Except for the membership clauses of the deportation laws there could hardly have been, out of the thousands of aliens charged with deportable offenses, more than a canoe load of deportees. As to crime, actual or contemplated, the proofs submitted to the Secretary of Labor were so deficient that convictions in a criminal court would in almost every case have been impossible. Somewhat roughly, but quite accurately, a competent Federal officer who officially investigated the deportations campaign in all its principal geographical centers, succinctly described it as a "headhunting jamboree."

So far did the lawless spirit of the Department of Justice carry its detectives and their coadjutors, that they directed their machinery of intimidation at every official who in the performance of his duty was trying to administer justly the law of the land in the "red" deportations. For refusing in the great majority of those cases to order deportations because the law and the facts did not warrant it, the Assistant Secretary of Labor, who alone (the Secretary of Labor being absent) was charged by statute with making the necessary decisions of guilt or innocence, was denounced as a sympathizer with lawless agitations and criminal agitators. These denunciations were manifestly instigated by secret-service agents whose indefensible purposes he had foiled. With similar malice the denunciations were repeated, though ignorantly and crudely, by a subcommittee of the immigration committee of the

lower branch of Congress. They were recklessly made also from the floor of the House. So deceptive were they that an innocent Congressman from Kansas was gulled by them into fathering a resolution to impeach the Assistant Secretary of Labor for high crimes and misdemeanors. When the truth came out, these impeachment proceedings collapsed.

In contrast with the impeachment fiasco, one of the most gratifying and reassuring of all the events developed by the deportations delirium occurred. Twelve American lawyers of honorable distinction—from the North, the West and the South—with the eminent Dean of the Law School of Harvard University at their head, publicly indicted the Department of Justice, on Constitutional grounds, for its lawlessness in connection with the deportations crusade. Their indictment was brought to the attention of the United States Senate by one of the ablest Constitutional lawyers in that body, and the Senate ordered an investigation. The investigation having been made, the facts disclosed were by Constitutional tests damning—damning to such a degree that the protagonists for the Department of Justice on the investigating committee delayed for months, nearly or quite a year, any action whatever. It was their evident purpose to smother the Lawyers' Indictment in a blanket of Senatorial silence. After this long delay, however, they were forced into the open by the commanding persistence of a minority member of the Committee, the Senator who had brought on the investigation. He challenged further trifling by offering in behalf of the

Committee a report of his own, which, upon the evidence before the Committee, condemned the conduct of the detectives of the Department of Justice and the policy of the Department itself. This proposed report drew from the reluctant chairman of the investigating committee a report of the kind commonly called "whitewash." Virtually conceding the condemnatory facts, the chairman's report excused them by theories of Constitutional construction that might have charmed the "Feds" who railed at Thomas Jefferson. Such theories, if accepted, would cut a destructive swath through the Constitution's Bill of Rights. They were thoroughly refuted by a report in reply by the author of the first proposed report. Nearly two years after the completion of its investigation, the Committee was excused by the Senate from further action in the matter. The proposed reports, however, were by the Senate put into its own record as part of its proceedings.

More important considerations even than those relating to the Senate's investigation of the Department of Justice, are involved in my story of the deportations delirium. Our laws for the protection of our Government from aliens conspiring for its forcible overthrow, had been so drawn as to necessitate deportations for harmless expressions of harmless opinions. Alien residents were consequently persecuted to the extreme of expulsion for opinion's sake. This was excused on the theory that resident aliens are merely guests, with no right to propagate opinions. But a nation devoted to lib-

erty of opinion and freedom of speech cannot deny either right to resident aliens without launching a tendency to deny both rights to citizens also. Such a tendency would in those circumstances be in harmony with the nature of things political. In this historic instance it became manifest through measures introduced in Congress directly in response to delirious outcries for further legislation regulating opinion and restraining speech. The scope of this proposed legislation was not limited to resident aliens. Citizens also were within its purpose.

Like our alien deportation laws, these more inclusive measures were cleverly drawn. While they seemed to penalize only such opinions and such speech as were intentional incitements to crime, they would have furnished pretexts for punishing protagonists of any kind of change in government, however peaceable the method advocated, if it were repugnant to prevailing habits of partisan thought among the powerful.

One of them, for instance, would have made it a crime for any person to "display or exhibit at any meeting, gathering or parade, or in any other public place, any flag, banner, emblem, picture, motto or device which tends to incite or indicates a purpose . . . . to overthrow, change,"—note the word *change,*—"or defeat the Constitution of the United States and the laws and authority thereof." From this clause the element of force or violence was omitted. Nor could that element have been imported by construction from other clauses into this one. A display such as any of those described in

the proposed law, would have subjected every person responsible for it to punishment, if the display indicated a purpose, however peaceable the method, to *change* the Constitution of the United States. Had such a measure been in force as law when the income-tax, the liquor-prohibition, or the women's suffrage Amendments to the Constitution were proposed, every display of emblems indicating a purpose to make any of those changes, though by Constitutional methods, would have been a crime until the Federal courts had cancelled it as un-Constitutional. Absurd? It would seem so. No more absurd, though, than the possibility of our "red" deportations would have seemed in Jefferson's day, or in Lincoln's, or even as late as McKinley's.

That manifest absurdity aside, however, those sedition measures were so cunningly drafted that their enforcement clauses, though nominally limited to agitations in support of violence against the Government, could have been aimed with deadly effect at legitimate speech and legitimate print. Every person, for example, would have been subject to criminal prosecution for teaching, advising or defending "the destruction of human life, or the injury of any human being, or the injury or destruction of any private property, as a means of changing the Constitution, laws or Government of the United States or defeating the authority thereof." On the surface this reads somewhat like legitimate lawmaking, but in actual operation it could have gagged the advocates of every progressive change. For such a law would put public speakers for popu-

lar freedom at the mercy of zealous detectives and hostile witnesses. Nothing could be easier of misrepresentation, for instance, by a "swift witness" than a public speaker's legitimate demands for the overthrow of predatory property-systems. How could the difference between overthrow by regular revision or repeal, and overthrow by violent revolution, control the imagination of witnesses whose pay for detecting revolutionary crime depended upon criminal convictions? Vigorous metaphors in common use might easily serve in their imaginations to transform legitimate agitations into agitations for revolutionary violence. Quite suggestive in this connection is the anecdote of the American newspaper correspondent abroad, who, having cabled to his editor a piece of news about Lloyd George which he discovered immediately afterwards to be incorrect, was taken into custody by a European secret-service bureau for filing a supplementary message telling his editor to "kill Lloyd George." For similar technical, slangy or otherwise freakish uses of English speech, and even for higher-grade metaphors, more than one resident alien was arrested during the deportations delirium for deportation as an alien "red."

Such drastic laws would not only have endangered legitimate liberties, but in the interest of order they were absolutely needless. The Federal laws already included ample provision for penalizing sedition. They provided that "if two or more persons in any State or Territory, or in any place subject to the jurisdiction of the United States, con-

spire to overthrow, put down or to destroy by force the Government of the United States, or to levy war against them, or to oppose by force the authority thereof, or by force to prevent, hinder or delay the execution of any law of the United States, or by force to seize, take or possess any property of the United States contrary to the authority thereof, they shall be fined not more than five thousand dollars or imprisoned not more than six years, or both." Under this law, the Department of Justice, with its huge appropriations for the detection and prosecution of crimes against the United States, could have prosecuted, convicted and punished any of the victims of its "red" raids, citizens or aliens, if in truth it had possessed the proofs of guilt which it pretended to have.

With that law in the Federal statute books there was no legitimate need for further laws to protect our Government from forcible assault by conspirators within its borders. The evident purpose of those marvelous Congressional measures described above, and the only need for them if it may be called a need, was as a subterfuge for destroying freedom of speech and assembly in the United States.

Do any Americans really wish to destroy freedom of speech and assembly in the United States? Does any genuine American wish even to hamper either of those traditional American liberties? Are they not in all candor the best possible conservators

of social order? These questions get their American answer in the quoted words that follow:

> "We must fearlessly and always stand for the free speech and free press and free assembly guaranteed under our Constitution. What have we to fear in the free discussion of anything? If our institutions will not bear discussion something ails them. If any of our citizens, native or foreign-born, or even any aliens among us, have other institutions to recommend, let us look them over. If they obtain support we can vote on them. Only through such processes can a democratic people advance.
>
> "That is the English way; *they* are not afraid of open discussion. All through the War—a war which pressed infinitely closer to their life than it did to ours—the great rallying ground for open-air meetings in London (Hyde Park Corner) was utilized by all sorts of oppositions, and even by those which preached violence. The pacifists, the Socialists, even the Sinn Feiners, spoke there to crowds without interference. An American is reported to have asked a policeman in amazement if the authorities were not going to stop a Sinn Fein meeting then in progress before his eyes. 'No,' said the bobby, 'hit don't 'urt us, and hit does 'em good to git it out o' they systems.' From an American paper of May 7, 1920, the Akron (Ohio) Beacon Journal, I have taken the following: 'The American and the English

Way. The British Socialist Party a few days ago held a convention in the town hall of Bethnal Green. The Mayor presided. Among the speakers was one Mr. Hodgson. We quote from the London Times: "Mr. Hodgson said that when the opportunity came they were going to lead the working class to seize power, and that if there was any opposition they were going to fight. He thought the best and easiest way to avoid excessive bloodshed was to make it clear now that they were going to fight for power. What they were setting out to do could never be done except by force of arms. . . . The working classes must arm themselves for the great day when they must rout the capitalist class by force." Nobody was arrested or deported. The British Empire has not crumbled away. Property has not perished at the end of the torch. In other words, England is once more pursuing her historic policy of letting her radicals talk their heads off to anybody that will listen to them.'

"Moreover, if we are to create a great solidarity out of diversities—a Nation that functions as a Social Man—we must hear and ponder what all the various elements have to offer."[1]

As the Congressional measures for obstructing freedom of speech and assembly in the United

[1] From an Address by Alice Thacher Post before the National Alliance of New-Church Women, at Brooklyn, New York, June 4, 1920.

States, which are recalled above, did not secure Congressional sanction, freedom of speech and assembly are not yet subject to censorship. But a revival of the delirium of which my story tells, or the outbreak of another like it, would with probable ease lead on to their enactment, if not by title and to the letter, at any rate in substance. They were reactionary measures, and reactionary legislation is characteristic of popular deliriums. Such aberrations help to turn the clock backward. Such legislation makes breaches in the barriers that democracy erects against autocracy. If it were to revive and to persist, the time might come nor be long delayed, when the American people would realize the significance of that grim story of the French passenger on a ship coming into New York Harbor, who, upon having the towering Statue of Liberty pointed out to him from the deck by a fellow passenger of the patriotic American variety, solemnly remarked: "Yes; we also erect statues to our illustrious dead."

Our deportations delirium of nineteen-twenty resembled very closely the social aberration that gave to Tory England the repressive "Six Acts" of a century before. Frightened by democratic organizations which sprang up in England after the Napoleonic wars, the aristocratic classes there demanded and of course obtained legislation for the protection of their privileges from public criticism and possible revocation. By those "Six Acts" of 1819, meetings of more than fifty persons were forbidden unless held upon six days' notice to a

magistrate from seven householders, penalties for seditious publications were increased, and the democratic press was loaded down with stamp duties. Coming as they did a quarter of a century after the French Revolution, from which the delirious fear of democracy got its impulse in England, the "Six Acts" indicate a long persistence there of that delirium. Truly it did persist long. We have the authority of Sydney Smith for saying that it began with the beginning of the century and lasted until the death in 1828 of Lord Liverpool, who appears from his efforts at suppression of democratic discontent to have been the chief tory factor in keeping the fever of the delirium high. During this period of twenty-eight years, so Sydney Smith declared a few years later, persons in England who entertained liberal opinions and were too honest to sell them for judicial or ecclesiastical preferment, were sure to be assailed with all "the billingsgate of the French Revolution—Jacobin, leveller, atheist, deist, socinian, incendiary, regicide," being "the gentlest appelations used."[1] Even as the antique billingsgate that Sydney Smith quotes was hurled at every type of democrat in England in his day, so billingsgate of more modern design—red, radical, socialist, anarchist, communist, bolshevik, atheist, freelover,—was at

[1] Volume 3 of "British Essayists". Reprinted in "The Works of the Rev. Sydney Smith" (page 5 of Preface), published by Phillips, Sampson & Co., at Boston in 1856.

the period of our deportations delirium hurled indiscriminately at every type of social reformer in the United States. Even Jane Addams, who rightly ranks among the best citizens of this Republic, was docketed as a dangerous "radical" by the supervisors of American thought who sprang up at that time. But may not the epithet after all have been an unintentional tribute? "Radical" is an epithet that once honored the politics of Great Britain, and one which the Republican Party of the United States was in the sixties proud to bear.

The spirit of our deportations delirium is further identified with that of the British delirium of a century ago through an allusion with which the eminent British essayist from whom I have just quoted supplemented his samples of tory billingsgate. "Not a murmur was permitted," he wrote, "against any abuse which a rich man inflicted or a poor man suffered." That social insanity, then, was characterized as was our recent one, by an idolatrous reverence for property privileges. As the British delirium of Sydney Smith's day was precipitated by agitations which threatened the property privileges of an aristocracy intrenched in political power, precisely so was our deportations delirium of nineteen-twenty precipitated by agitations which seemed to threaten the property privileges of a similarly intrenched plutocracy. Exquisitely appropriate to both seems to be the

sentiment of Tennyson's "Northern Farmer: New Style"—

"Dosn't thou 'ear my 'erse's legs, as they canters awaay?
Proputty, proputty, proputty—that's what I 'ears 'em saay.
. . . . . .
Proputty, proputty's ivrything 'ere, an', Sammy, I'm blest
If it isn't the saame oop yonder, fur them as 'as it's the best.
Tis'n them as 'as munny as breaaks into 'ouses an' steaals,
Them as 'as coaats to their backs an' taakes their regular meaals.
Noa, but it's them as niver knaws wheer a meaal's to be 'ad.
Taake my word for it, Sammy, the poor in a loomp is bad.
. . . . . .
Coom oop, proputty, proputty—that's what I 'ears 'im saay—
Proputty, proputty, proputty—canter an' canter awaay."

When "the communism of pelf", as President Cleveland called it, which could not thrive but for predatory property privileges, falls a victim to revolution anywhere in the world—as in France in Robespierre's day or in Russia in ours—every opinion in hostility to property, whether righteous property or predacious property, looms up in fear-haunted minds as a social menace. These were the minds, studiously stirred by cooler ones, that caused and fostered our deportations delirium. Originating with manipulators of property interests of the predacious kind, it was spread among folk who had only prospective or possible interests in property of any kind; and out of the confusion leaped angry denunciations of social agitators, and frantic appeals to paganistic patriotism. As to agitators who happened to be aliens among us, my story tells the rest.

In characterizing the patriotism of the deportations delirium as paganistic, I use no epithet and intend no reflection upon citizens who, loving

America for her democracy, adore our flag as her emblem. But between that kind of patriotism and mere pride of nationality as of a family tree, or such adoration of our flag as a pagan gives to his gods of wood and stone, there is a wide gulf.

We have reason to be proud of our federated republic as the great pioneer in democratic government. May we always be proud of her for that—all of us; better yet, may we always have that reason for our pride. But patriotism of this lofty kind does not lend itself to measurement by financial percentages. It can be judged only by the tests that Lincoln applied in his classic address at Gettysburg. Government *of* the people there must be, but let it be *by* the people and *for* the people. These patriotic principles, so succinctly phrased by Lincoln, are embodied in our Constitution, which gives legal form to the spirit of our Declaration of Independence, that "all men are created equal and endowed with certain unalienable rights, among which are life, liberty and the pursuit of happiness." This is of the essence of genuine American patriotism. And our Constitution, which vitalizes our Declaration, not only acknowledges its own origin as from the people, but it provides for its own amendment at their command. Under its amending clause we are at liberty to make our Government as democratic or as autocratic or as communistic or as anarchistic or as socialistic or as plutocratic as we collectively wish. Revolutions are not needed here to substitute newer and better, or worse, governmental conditions for those we

have. Nothing is required but the will of the people expressed in the Constitutional way.

It follows that no agitation whatever for changes in our Government, even to the point of complete abolishment, is unpatriotic, provided the method proposed is by Constitutional Amendment in accordance with the terms of the amending clause. Nor will any truly patriotic American regard the amending clause as less sacred than any other clause of that great American document.

Many of those clauses are sacred, indeed; may they ever be so esteemed by the American people. Among them are the provisions against arbitrary arrests, against unwarranted searches and seizures, against abridgments of freedom of speech and press and peaceable assembly, and against exactions of excessive bail. Are not those provisions essential to a people's government? Our Constitution invites no sympathy with fears of "dangerous thoughts," nor tolerates any anxiety about dangerous words divorced from violent designs. Its primary concern is to secure to all the people freedom to think and speak and write and publish, and to establish personal liberty of each consistently with the personal liberty of all, wherever our flag flies.

Except as our flag is the emblem of that governmental ideal, what is it but a strip of cloth? To idolize the cloth itself regardless of what it symbolizes, the combination of mere fibre and color and form with no thought of its emblematic significance, what is this but fetish worship? To cherish it even as a symbol, but a symbol only of democratic

achievements of the past, is to let our patriotism rot in a graveyard. Unless our flag means to us something different from that, at least something more than that, we deaden civic conscience by making it an object of popular adoration; and we supply handy equipment for demagogues and plutagogues. If, on the other hand, we revere the flag as our symbol of liberty triumphant in government, remembering that Liberty is not an empty word to fall trippingly from the tongue, but is the vital force of a growing social organism, the halo of a new glory will bathe that flag in resplendent light.

Flag worship of this kind is patriotic. But what can be said for the American who noisily, sometimes riotously, worships our national emblem without a spark of loyalty to the ideals it symbolizes? Many do. Some worship it hypocritically, for the profitable part their hypocrisy may play in their business or in their political maneuvers. Some display it conspicuously with motives akin to that of the country schoolmaster as interpreted by one of his pupils —"to hide the dirt behind it." Many think only of its beautiful colors, or perhaps of its tragic battle history, ignoring its symbolism altogether. These are sincere enough, no doubt; but for all that, they are only pagan patriots. And our Government's greatest danger lurks in those pagan patriots who, without malice, without evil designs of any kind, but heedlessly, support any cause, however menacing it may be to American ideals, if its promoters decorate it richly enough with the American flag.

This was a phase of the deportations crusade of

nineteen-twenty which evoked from Senator Borah a solemn warning. "The safeguards of our liberty are not so much in danger," he wrote, "from those who openly oppose them as from those who, professing to believe in them, are willing to ignore them when found inconvenient for their purpose; the former we can deal with, but the latter, professing loyalty, either by precept or example undermine the very first principles of our Government, and are far the more dangerous."

It was a pernicious delirium, that of which my narrative tells. It generated a crusade for the deportation of alien residents, the spirit of which was hostile to American ideals of government and its methods defiant of American law. Had the public sentiment that made this crusade possible been a product of considerate American thought, instead of a temporary delirium, the democracy of our Republic would have barely escaped destruction by the very forces that were operating professedly for its preservation. The episode might be safely forgotten were it not that it may serve as a warning to the American people to be alert, even in delirious periods, for the protection of American liberties. Lawless persecutions of resident aliens, though only symptoms of a popular frenzy, might easily lead on, if the delirium persisted, to comprehensive policies that would turn our Republic backward upon its democratic course. Americans cannot afford to ignore their traditional admonition that "eternal vigilance is the price of liberty."

APPENDIX

FUNDAMENTAL AMERICAN PRINCIPLES

I. Equality of Human Rights.

"*All men* are created equal"; "they are endowed by their Creator with certain unalienable rights"; "among these are life, liberty and the pursuit of happiness"; "to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed."—*From the American Declaration of Independence.*

II. Revolutionary Rights and Their Limitations.

"Whenever any form of government becomes destructive of these ends"—human rights and government by the consent of the governed—"it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness."—*From the American Declaration of Independence.*

"Prudence, indeed, will dictate that governments long established should not be changed for light and transient causes; and accordingly all experience hath shown, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are ac-

customed. But when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security."—*From the American Declaration of Independence.*

Yet "a decent respect to the opinions of mankind requires that they should declare the causes which impel them . . . ."—*From the American Declaration of Independence.*

III. Constitutional Safeguards.

"We the people of the United States, in order to . . . . secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America. . . . . The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States. . . . . The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several States, shall call a convention for proposing amendments, which, in either case, *shall be valid to all intents and purposes, as part of this Constitution,* when ratified by the legislatures of three-fourths of the several States, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress. . . . . Congress shall make no

law . . . . abridging the *freedom of speech,* or of the *press;* or the right of the people *peaceably to assemble* and *to petition* the government for a redress of grievances. . . . . The right of the people to be secure in their persons, houses, papers and effects, against unreasonable *searches and seizures,* shall not be violated, and no warrants shall issue, but upon probable cause supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. . . . . No *person''*—neither citizens nor alien—"shall be . . . . deprived of life, liberty, or property without due process of law. . . . . *Excessive bail* shall not be required."—*From the American Constitution.*

IV. Popular Government.

"We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America," all Amendments duly ratified to *"be valid to all intents and purposes as part"* thereof.—*From the American Constitution.*

"Four score and seven years ago our Fathers brought forth on this continent a new nation, conceived in liberty, and dedicated to the proposition that *all men* are created equal. . . . It is for us . . . . to be here dedicated to the great task

remaining before us . . . . that we here highly resolve . . . . that government of the people, by the people, for the people, shall not perish from the earth."—*From the classic address of President Lincoln, at Gettysburg, November 19, 1863.*

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